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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Protection of migrants

Report of the Secretary-General

Summary

The present report, submitted in accordance with General Assembly resolution 65/212, contains a summary of communications received from Governments in response to a note verbale dated 7 June 2011 from the Office of the United Nations High Commissioner for Human Rights (OHCHR), on behalf of the Secretary-General, requesting information on the implementation of that resolution. The report also contains a summary of communications received from Governments in response to a note verbale sent on 8 June 2010 by OHCHR on behalf of the Secretary-General requesting information on the implementation of resolution 64/166. The report also provides information on the status of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and on the activities of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Special Rapporteur on the human rights of migrants, the universal periodic review process of the Human Rights Council and OHCHR.

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I. Introduction

1. In paragraph 10 of its resolution 65/212, the General Assembly requested the Secretary-General to submit a report on the implementation of that resolution to the Assembly at its sixty-sixth session and to include in the report an analysis of the ways and means to promote the human rights of migrants, in particular how the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families had influenced policy and practice, where applicable, to strengthen the protection of migrants, in the context of the twentieth anniversary of the Convention.

2. The report summarizes responses received from Member States concerning the implementation of General Assembly resolutions 64/166 (sect. II) and 65/212 (sect. III),[1] and provides information on the activities of the Special Rapporteur of the Human Rights Council on the human rights of migrants (sect. IV), the status of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (sect. V), the activities of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (sect. VI), the universal periodic review mechanism of the Human Rights Council (sect. VII) and the activities of the Office of the United Nations High Commissioner for Human Rights (OHCHR) (sect. VIII). Conclusions and recommendations are presented at the end of the report (sect. IX).

II. Information from Governments with regard to the implementation of General Assembly resolution 64/166

3. As at 26 July 2011, replies concerning the implementation of General Assembly resolution 64/166, in addition to those included in the previous report (A/65/156), had been received from: Qatar, Portugal and Spain. Summaries of the responses are provided below. The full texts of the responses are available from OHCHR, upon request.

Qatar

[Original: Arabic]
[15 July 2010]

The Government reported that the protection of migrants in the State of Qatar is a principle enshrined in the Constitution through the following principles: the society is based on the values of justice and charity, freedom, equality and morals (article 18); all people are equal before the law without discrimination on the basis of race, language or religion (article 35); and every person residing in the State has legal protection for his or her person and property, in accordance with the provisions of the law (article 52).

The Government further noted that the National Commission for Human Rights is mandated to consider grievances and complaints from migrants and can

[1] Sect. II includes responses to resolution 64/166 that were not included in the previous report on the protection of migrants (A/65/156) owing to their late submission.

refer them to the concerned authorities. The Ministry of Labour can also consider disputes between employers and migrant worker employees. The preferred method of dispute resolution is mediation. When this is not possible, cases are referred to the courts.

Portugal

[Original: English]
[5 August 2010]

The Government noted that Law No. 23/2007 on the entry, permanence, exit and removal of foreigners into and out of national territory (Aliens Act) and Law No. 147/99 on the promotion of the rights and the protection of children and youngsters at risk constitute the national legal framework on unaccompanied and separated children. Law No. 147/99 includes a set of measures aimed at the promotion of rights and protection of children and youngsters at risk in order to ensure their well-being and integral development.

The Constitution of the Portuguese Republic, in article 15, paragraph 1, extends to foreigners and stateless persons with residence in Portugal the enjoyment of the same rights, subject to the same duties, as Portuguese citizens.

The right to health and education as fundamental rights are enshrined in articles 64 and 73 of the Portuguese Constitution. These provisions have a universal nature and cannot be excluded by any restrictive interpretation, as laid down in paragraphs 1 and 2 of article 16 of the Constitution.

The Portuguese health and education systems are universal. This means that every person/child has the right to access health care and education facilities and services and that foreign citizens have the same access as their co-citizens to the health system and to its advantages, including medical care and social security and social services. In addition, according to Decree Law No. 67/2004, public schooling cannot be refused to children due to the irregular situation of their parents. The registry of irregular minors is confidential.

The Ministry of Health Normative Order No. 25 360 (2001) states that: "All citizens have the right to health and the duty to protect it. An immigrant living in national territory who feels ill or needs medical assistance therefore has the right to be assisted in a health centre or hospital (in case of emergency), and these services cannot refuse to assist him/her because of nationality, lack of economic means, irregular situation or any other reason". In 2009 the Ministry of Health issued Circular No. 12/DQS/DMD, which clarifies an instruction followed since 2001, according to which irregular immigrants who are in Portugal for over 90 days cannot be refused access to public health care, although, in general terms, they might have to bear the real costs. Exceptions may be made, however, in cases where urgent and vital care are needed, or in case of transmissible diseases that endanger or threaten public health.

The Government reported that the Ministry of Education has put in place an action plan to help support the around 80,000 non-native students enrolled in Portuguese schools, taking into account the deep change in the school population, implementing measures adequate to the specific situation of those students, aiming at contributing to their full integration in the educational system.

Spain

[Original: Spanish]
[15 July 2010]

The Government reported the amendments introduced by Act LO 2/2009, adopted on 12 December 2009, to the previous Act on the Rights, Freedoms and Social Integration of Foreigners in Spain of 2000. Such amendments were motivated by two decisions of the Constitutional Court, European Union directives and the experience of new migrations to Spain. While migrants, regardless of their administrative situation, already enjoyed the rights to urgent health care, child and maternal health care and education in the case of children, some rights, such as the right to be documented, the right to family reunification, the right to work and to freedom of movement, were granted only to regular migrants. The Constitutional Court extended to irregular migrants the right to strike, and to form and join trade unions, demonstrations and associations.

The Government further reported that the new amendments strengthened the recognition of rights to all migrants, irrespective of their administrative condition. The new act also reinforced the right to judicial protection and expanded the right to family reunification, including protection to legal or common law partners, children and descendants with disabilities, and in some cases to parents, under certain conditions.

The new act has also introduced amendments regarding the application of sanctions. The principles that guide the application of sanctions are those of proportionality (provided that the sanctions related to the migratory condition are administrative and not criminal), legal guarantees (reduction of the margin of discretion to apply sanctions) and co-responsibility (consideration of the responsibility of Spanish nationals promoting irregular migration). Some of the amendments introduced in this regard include the provision of new administrative offences, both for migrants and for Spanish nationals that have promoted or participated in fraud regarding migrants, the joint liability of contracting and subcontracting enterprises when hiring irregular migrants and failing to comply with their contractual obligations and the establishment of fines as prima facie sanctions, thus limiting the discretion to effect expulsions, which should be exceptional. The new act includes some specific guarantees regarding expulsions: the need to provide explicit justification for such measures, the possibility of revocation in some cases, the provision of some exceptions to expulsion and protections for victims of human trafficking.

The act also includes some amendments regarding immigration detention centres, which are not considered criminal but precautionary facilities. The legislation provides for alternatives to detention, sets a 60-day limit for such detention and ensures detainees access to non-governmental organizations and national and international bodies working to protect the rights of migrants.

The Government highlighted the protection provided by the Spanish legislation to the rights of unaccompanied migrant children. The principles guiding such legislation are: the best interest of the child; the preservation of the contact with his/her family; and social and family integration. In this regard, the Spanish legal framework considers a number of flexible possibilities, taking into account the need for immediate protection, the existence of family members or other persons

who could take charge of the child and the existence of social protection services in his/her country of origin.

III. Information from Governments with regard to the implementation of General Assembly resolution 65/212

4. As at 26 July 2011, the Governments of the following Member States had replied to the note verbale sent on 7 June 2011: Azerbaijan, Cyprus, Ecuador, Honduras, Mauritius and Slovakia. Informal summaries of the responses are provided below. The full texts of the responses are available, upon request, from OHCHR.

Azerbaijan

[Original: English]
[14 July 2011]

The Government reported that it had ratified a number of international instruments relevant to migration, including the United Nations Convention against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, and its Protocol against the Smuggling of Migrants by Land, Sea and Air.

According to article 69, paragraph 1, of the Constitution of Azerbaijan adopted in 1995, foreigners and stateless persons enjoy equal rights with citizens. Specific rights related to movement and work are reflected in the law on the "Legal status of foreigners and stateless persons" which was adopted in 1996. The Government further noted that Presidential Decree No. 69, dated 4 March 2009, simplifies the procedures for registration of foreigners and stateless persons arriving in the country for residence or work.

A draft migration code, which has been elaborated for the purpose of protecting the rights of migrants, has been presented to the Cabinet of Ministers of Azerbaijan. The Migration Service of Azerbaijan collaborates with the migration authorities of other countries, as well as with international organizations, in order to protect the rights of migrants. The Migration Service also carried out awareness-raising activities through its Migration Information Centre.

Cyprus

[Original: English]
[18 July 2011]

The Government noted that although it had not ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, it had taken specific measures to protect the rights of migrants.

The first national action plan 2010-2012 for the integration of third country nationals legally residing in Cyprus, approved by the Council of Ministers on 13 October 2010, includes eight pillars for action derived from principles developed within the European Union. These pillars are: information, services and

transparency; employment; education, learning the language; health; housing, improving quality of life, social protection and interaction; learning the culture, civic participation, basic knowledge of political and social life in Cyprus; participation; and evaluation.

The Government further noted that trafficking in human beings is considered a cross-border criminal phenomenon and that combating this phenomenon is one of the top priorities of the Ministry of Interior and the Multidisciplinary Coordinating Group against Trafficking in Human Beings. On 22 April 2010, the Council of Ministers adopted a new national action plan against trafficking in human beings. The implementation of the action plan has already commenced, including the publication of information materials and an awareness-raising event on the plan held on 18 October 2010.

Ecuador

[Original: Spanish]
[14 July 2011]

The Government reported that Ecuador had ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families on 18 October 2001 and had presented two reports to the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, elaborating measures taken to fulfil its obligations under the Convention.

The Government noted that the National Secretariat for Migrants had been elevated to the ministerial level in March 2007, and that it had enacted a national development plan for migrants, which aims, inter alia, to protect and promote their human rights.

The Government further reported that the right to health and to education are guaranteed by the Constitution and that such rights are also extended to foreigners. All migrant children, irrespective of their legal status, are guaranteed the right to education. In addition, important advances have been made to ensure that all children born in Ecuador have nationality, regardless of the legal status of their parents. In addition, parents of children who are Ecuadorian citizens are able to obtain a legal status.

Articles 61, 95 and 102 of the Constitution provide the right to participation in public affairs for Ecuadorians who are migrant workers. In addition, article 63 gives the right to vote to foreigners who have resided legally in Ecuador for at least five years.

Honduras

[Original: Spanish]
[20 July 2011]

On 27 February 2008, the Government reported in the Official Journal of Honduras that it had assigned resources for migrants through the creation of the "Solidarity Fund for Honduran Migrants in Vulnerable Situations". The Fund contains an assigned annual budget of 15 million lempiras, which should be

increased annually by a percentage equivalent to the inflation index established by the Central Bank of Honduras for the previous year. These funds can be allocated to migrants with scarce financial resources for: repatriation of the deceased; serious health conditions; amputations; terminal illnesses; assistance to victims of kidnappings; repatriation of non-accompanied minors; repatriation of men and women in vulnerable conditions; search of persons that went missing during the migration process; and immediate assistance to migrants deported by air or land. The Government further reported that the main beneficiaries of the fund are the 800,000 to 1,000,000 Hondurans who reside in the United States of America, approximately 73,000 of whom are in temporary protected status.

Honduras has signed and ratified the following international conventions: International Convention for the Protection of All Migrant Workers and Members of Their Families and the agreement for collaboration and international assistance between the National Commission for Human Rights of Honduras and the National Commission for Human Rights of Mexico.

Mauritius

[Original: English]
[18 July 2011]

The Government reported that under national legislation migrant workers enjoy the same terms and conditions of employment as those laid down for local workers. Section 16 of the Constitution provides that no law shall contain any provision that is discriminatory either in and of itself or in its effect. The Employment Rights Act 2008 applies equally to local and expatriate workers, guaranteeing to the latter equal protection in terms and conditions of employment and in the event of termination of employment by their employer.

The Government noted that the Employment Rights Act of 2008 also guarantees the fundamental right of migrant workers to freedom of association and protects their right to organize and engage in collective bargaining.

Slovakia

[Original: English]
[21 July 2011]

The Government reported that it supports equal access to employment for all foreigners who have legal residence in the country, ensuring them equal treatment in terms of recruitment, working conditions and occupational health and safety.

Special law No. 365/2004 Coll. on equal treatment in certain areas, including protection against discrimination (anti-discrimination act), provides that employers are obliged to treat all employees in accordance with the principle of equal treatment.

The Government noted that in order to protect the rights of migrants, free support services as well as information on work opportunities and social services are provided free of charge by the offices of labour, social affairs and family through

the European Union job mobility portal (EURES) and its departments. Social and legal counselling are also provided by several non-governmental organizations.

The Government also reported the existence of asylum procedures to provide protection to persons in need of international protection, including persons who have entered the territory of Slovakia illegally. The Asylum Act also contains the possibility of granting asylum on humanitarian grounds, including to elderly, ill or disabled people whose return to their country of origin could pose a serious threat to their lives.

IV. Activities of the Special Rapporteur of the Human Rights Council on the human rights of migrants

5. The activities of the Special Rapporteur are carried out in accordance with Human Rights Council resolutions 8/10 and 17/12, by which the Council extended the mandate of the Special Rapporteur on the human rights of migrants for a period of three years.

6. During the reporting period, the Special Rapporteur continued to advocate a human rights-based approach to migration and the protection of the human rights of migrants at all stages of the migratory process. In discharging his mandate, the Special Rapporteur met with numerous representatives of international and regional organizations, as well as of civil society, to discuss issues related to his work.

7. The Special Rapporteur attended the Global Consultation on Migrant Health, organized by the International Organization for Migration (IOM) and the World Health Organization (WHO) in Madrid from 3 to 5 March 2010. On 6 and 7 October 2010, he participated at the Festival Viva América, organized by Casa de América, in Madrid, Spain. From 4 to 8 October 2010, together with the Special Rapporteur on the sale of children, child prostitution and child pornography and the Special Rapporteur on contemporary forms of slavery, he participated in a conference entitled "Children on the Move", organized by the Global Movement for Children, Save the Children UK and the Fundació Privada Moviment Mundial a Favor de la Infància, in Barcelona, Spain, from 4 to 8 October 2010.

8. On 22 October 2010, the Special Rapporteur presented his annual report to the General Assembly (A/65/222). The report focused on the criminalization of migration.

9. From 8 to 11 November 2010, the Special Representative participated in the Fourth Meeting of the Global Forum on Migration and Development, hosted by the Government of Mexico in Puerto Vallarta. The Forum focused on partnerships for migration and human development.

10. At the seventeenth session of the Human Rights Council, the annual thematic report, and the final to be submitted by the outgoing Special Rapporteur on the human rights of migrants, Jorge Bustamante, was presented to the Council (A/HRC/17/33). In the first part of the report, the Special Representative recapitulated some of the main thematic issues he has focused on since his nomination, namely irregular migration and the criminalization of migrants, protection of children in the migration process and the right to housing and health of migrants. In the second part, he proposed a few possible themes which merit further

research under the mandate. The two themes he considered important for further research and discussion are: migration in the context of climate change; and the political participation and civil rights of migrants.

11. The Special Rapporteur also presented a report on the communications sent to Governments and the replies received (A/HRC/17/33/Add.1) and reports on his country missions to Senegal (A/HRC/17/33/Add.2), Japan (A/HRC/17/33/Add.3) and South Africa (A/HRC/17/33/Add.4).

12. At the seventeenth session of the Human Rights Council, François Crépeau (Canada) was appointed as the new Special Rapporteur on the human rights of migrants.

V. Status of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

13. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families entered into force on 1 July 2003. As at 1 July 2009, 44 States had ratified the Convention: Albania, Algeria, Argentina, Azerbaijan, Belize, Bolivia (Plurinational State of), Bosnia and Herzegovina, Burkina Faso, Cape Verde, Chile, Colombia, Ecuador, Egypt, El Salvador, Ghana, Guatemala, Guinea, Guyana, Honduras, Jamaica, Kyrgyzstan, Lesotho, the Libyan Arab Jamahiriya, Mali, Mauritania, Mexico, Morocco, Nicaragua, the Niger, Nigeria, Paraguay, Peru, the Philippines, Rwanda, Saint Vincent and the Grenadines, Senegal, Seychelles, Sri Lanka, the Syrian Arab Republic, Tajikistan, Timor-Leste, Turkey, Uganda and Uruguay. The entry into force of the Convention assists in securing a protective mechanism for the human rights of migrants, including those in irregular situations. All Member States that have not yet become parties to the Convention are urged to consider acceding to it promptly.

VI. Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families

14. The Committee, which is composed of 14 independent experts, monitors the implementation of the Convention by its States parties. Since its first session, held in March 2004, the Committee has considered the initial reports submitted by 15 States parties and two periodic reports.

15. At its thirteenth session, held from 22 November to 3 December 2010, the Committee considered the initial reports of Albania and Senegal (CMW/C/ALB/1 and CMW/C/SEN/1) and the second periodic report of Ecuador (CMW/C/ECU/2). At its fourteenth session, held from 4 to 8 April 2011, the Committee considered the second periodic report of Mexico (CMW/C/MEX/2).[2] The common issues raised by the Committee included: the need for measures to bring legislation into line with the provisions of the Convention; the importance of data collection to assist in the development of sound migration policies; the need to strengthen and expand training

[2] See the concluding observations of the Committee contained in documents CMW/C/ALB/CO/1, CMW/C/SEN/CO/1, CMW/C/ECU/CO/1 and CMW/C/MEX/CO/2.

programmes for all officials working in the area of migration on the rights enshrined in the Convention; the importance of ensuring that in practice all migrant workers and members of their families, including those in an irregular situation, had access to an effective remedy for the violation of their rights; the need for effective protection of migrants, including those in transit; the need for effective coordination among the different agencies dealing with migration issues; the need to supervise recruitment agencies; and the importance of continuing measures aimed at preventing and combating smuggling and trafficking in human beings.

16. At its thirteenth session, the Committee adopted its general comment No. 1 on Migrant Domestic Workers. The adoption of the general comment followed a thorough process of consultation, including three public meetings and a day of general discussion on migrant domestic workers, which was held on 14 October 2009.

17. The twentieth anniversary of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families was commemorated in 2010. The Committee marked the occasion with a series of discussions examining the accomplishments of the Convention in the areas of migration and development and migration and gender and presented its perspective on the wider ratification and more effective implementation of the Convention.

18. The Committee has examined the second periodic reports of two countries: Ecuador (see CMW/C/ECU/2) and Mexico (see CMW/C/MEX/2). In both cases, the Committee recognized the efforts made and the steps taken by the States parties to implement their obligations under the Convention. In the case of Ecuador, the Committee welcomed the abolition of the exit permit requirement for nationals and foreigners wishing to leave the country (as recommended by the Committee in 2007) and also noted the entry into force of Ministerial Decision No. 337/2008, which guarantees access to preschool, primary and secondary education for children, including adolescents, of migrant workers, regardless of their migratory status (in line with the Committee's previous recommendation). In the case of Mexico, following the recommendations made by the Committee in 2006, the State party: recognized the Committee's competence to receive and consider communications from individuals under article 77 of the Convention; adopted the Act to Prevent and Punish Trafficking in Persons and the General Act on Women's Access to a Life Free of Violence; and incorporated the offence of human trafficking into its federal criminal code.

VII. Universal periodic review mechanism of the Human Rights Council

19. In 2006, the General Assembly, in its resolution 60/251, decided that the Human Rights Council should undertake a universal periodic review of the fulfilment by each State Member of the United Nations of its human rights obligations and commitments. During the reviews of 159 States undertaken at the 10 sessions of the Council's Working Group on the Universal Periodic Review in 2008, 2009, 2010 and 2011, recommendations were directed at a number of States

concerning the protection of migrants.[3] Recommendations included to: review and ensure that national legislation and policies on migrants complied with international human rights law;[4] take treaty action, including with regard to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;[5] cooperate with the special procedures, including the Special Rapporteur on the human rights of migrants;[6] and implement the recommendations of United Nations human rights mechanisms.[7] Other recommendations concerned non-discrimination and equality, especially in access to economic, social and cultural rights, including education and health services,[8] with particular reference to children and migrant women;[9] elimination of criminal sanctions against undocumented migrants;[10] consideration of alternative measures to the detention of migrants;[11] enabling access to justice and legal aid for migrant workers;[12] ensuring that the rights of migrants were respected, particularly by law enforcement officials.[13]

VIII. Activities of the Office of the United Nations High Commissioner for Human Rights

20. OHCHR continues its efforts to strengthen the protection of the human rights of migrants and to ensure that the perspective of the human rights of migrants is included in migration discussions at the national, regional and global levels.

21. OHCHR promotes the integration of human rights norms and standards in all aspects of migration policy. The Office works to ensure that migrants enjoy human rights without discrimination and works with States and other stakeholders to apply a human rights-based approach to migration, placing the migrants at the centre of migration policies and management and paying particular attention to the situation of marginalized and disadvantaged groups of migrants. A number of thematic areas focus the work of OHCHR on migration; combating discrimination, racism and xenophobia against migrants; promoting the economic, social and cultural rights of migrants; opposing the criminalization of irregular migration; advocating access to safeguards in the context of immigration detention and to alternatives to the

[3] The background documentation for the reviews also included information on the human rights of migrants, including information prepared by the State concerned, in a number of forms, including: a national report and two reports prepared by OHCHR; a compilation of United Nations information; and a summary of input from stakeholders. All documentation regarding the universal periodic review can be accessed at http://www.ohchr.org/EN/HRBodies/UPR/Pages/Documentation.aspx.

[4] See, for example, A/HRC/16/11, paras. 92.64 and 82.

[5] See A/HRC/15/6, paras. 86.1-12; A/HRC/15/11, paras. 97.2, 4-10; A/HRC/16/9, para. 80.2; A/HRC/16/11, paras. 92.1, 15 and 29-31; and A/HRC/17/8, paras. 94.1-9.

[6] See A/HRC/15/6, para. 84.6.

[7] See A/HRC/17/8, para. 92.88; and A/HRC/17/10, para. 86.38.

[8] See A/HRC/15/6, paras. 84.53, 85.20 and 86.33; A/HRC/15/11, para. 96.44; A/HRC/16/11, para. 92.211; and A/HRC/17/8, paras. 92.25, 40 and 91.

[9] See A/HRC/15/11, para. 95.75 and 96.46; A/HRC/16/11, para. 92.81; A/HRC/17/7, para. 89.72; and A/HRC/17/8, para. 93.26.

[10] See A/HRC/17/10, para. 86.126.

[11] See A/HRC/15/11, para. 96.39; and A/HRC/17/10, paras. 86.131 and 132.

[12] See A/HRC/16/15, para. 96.22; and A/HRC/16/11, paras. 92.185 and 213.

[13] See A/HRC/16/11, paras. 92.104, 105, 144 and 209.

detention of migrants; and protecting human rights in the context of mixed migration. In her public statements, the United Nations High Commissioner for Human Rights has consistently called for the promotion and protection of the human rights of all migrants, regardless of their status.

22. In September 2010, OHCHR presented a study at the fifteenth session of the Human Rights Council on challenges and best practices in the implementation of the international framework for the protection of the rights of the child in the context of migration. The study was welcomed by Member States.[14]

23. Through its active participation in the Global Migration Group, OHCHR has actively sought to promote and mainstream a human rights approach to migration within the United Nations system. From July to December 2010, as Chair of the Global Migration Group, the High Commissioner for Human Rights made the human rights of all migrants, particularly those in an irregular situation, the thematic focus of the Group's discussions. A landmark joint statement, adopted by the principles of the Group in September, called on the international community to end discrimination and abuses against migrants in an irregular situation. The statement made the important point that international migrants in such circumstances should not be deprived either of their humanity or of their rights. Subsequently, a full-day meeting of experts on the human rights of irregular migrants, organized by OHCHR in October, generated policy recommendations on the issue of human rights and irregular migration which were widely disseminated.

24. On 17 and 18 May 2011, UNICEF as Chair of the Global Migration Group, convened a practitioners' symposium on the theme of "Migration and youth: harnessing opportunities for development". The symposium aimed to bring together a wide range of experts and practitioners to present future trends, discuss current knowledge, highlight existing gaps and share good practices on how to increase the positive impacts and minimize the negative impacts of migration on the development prospects of youth. OHCHR participated in the symposium as a member of the Group's troika, composed of OHCHR, the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the United Nations Children's Fund (UNICEF).

25. OHCHR participated in a one-day informal thematic debate on international migration and development, which was convened by the President of the General Assembly on 19 May 2011. The debate was intended to build on the ongoing dialogue on international migration and development and to contribute to the process leading to the second High-level Dialogue on International Migration and Development, which is to be held at United Nations Headquarters in 2013. Mr. Anthony Lake, the Executive Director of UNICEF, addressed the informal thematic debate in his capacity as Chair of the Global Migration Group, and transmitted a joint statement on behalf of the Group stressing the importance of protecting the fundamental human rights of migrants.

[14] In its resolution 65/212 the General Assembly took note "with appreciation of the study of the Office of the United Nations High Commissioner for Human Rights on challenges and best practices in the implementation of the international framework for the protection of the rights of the child in the context of migration", and invited "States to take into account the conclusions and recommendations of the study when designing and implementing their migration policies".

26. As Chair of the Global Migration Group from July to December 2010, the High Commissioner addressed the fourth Global Forum for Migration and Development, which was held in Puerta Vallarta, Mexico, from 8 to 10 November 2010. In her statement, the High Commissioner called for an end to the criminalization of irregular migrants and urged all States to ratify and effectively implement the core international human rights instruments protecting their human rights in particular the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. On 8 November, OHCHR organized a side event at the Global Forum to commemorate the adoption of the Convention and to call for its ratification.

27. On 11 and 12 May 2011, a two-day global round table on alternatives to the detention of migrants, refugees, asylum seekers and stateless persons was organized by OHCHR, in partnership with the Office of the United Nations High Commissioner for Refugees (UNHCR). The round table brought together representatives from States, OHCHR, UNHCR and other international organizations, human rights mechanisms, regional human rights bodies, national human rights institutions and national and international non-governmental organizations. The round table was organized to build on the results of the panel discussion on migrants in detention centres held during the twelfth session of the Human Rights Council.

28. OHCHR was invited to provide a training session on the normative framework related to the human rights of migrants organized by the International Labour Organization (ILO), and held in partnership with the Global Migration Group. OHCHR is currently finalizing a set of training modules on migration and human rights for the use of OHCHR field offices and United Nations country teams, as well as other stakeholders, including Governments, national human rights institutions and non-governmental organizations.

29. OHCHR supports efforts to promote the ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, including through the International Steering Committee of the Global Campaign for Ratification of the Convention on the Rights of Migrants, the work of which it coordinates. The Steering Committee is a network of international and regional civil society organizations and IOM, ILO, OHCHR and UNESCO. At the thirteenth session of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, in November 2010, an event was jointly organized by the Committee and the Steering Committee to commemorate the twentieth anniversary of the Convention. The theme chosen for the one-day event was "Protecting rights, building cooperation". States and other partners made statements and shared their experiences and views on how the Convention has made a difference in migration policies and practices.

30. On 21 March, the United Nations High Commissioner sent a letter to each of the 15 signatories that have yet to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, urging them to take prompt action to ratify and implement it.

31. On the occasion of the twentieth anniversary, the Steering Committee launched a global campaign also calling on Governments to ratify the Convention. In the context of the campaign, letters were sent on behalf of the members of the Steering Committee to nine States (Armenia, Belgium, Cameroon, Costa Rica, Côte d'Ivoire,

Indonesia, Kenya, South Africa and Spain) to encourage them to ratify the Convention.

32. At its thirteenth session, the United Nations Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families adopted general comment No. 1 on Migrant Domestic Workers, in which it recognized the particular vulnerability of migrant workers employed in private homes. The general comment describes the vulnerability of migrant domestic workers and recommends a range of social and legal actions to promote and protect their human rights, including regulation of recruiters, the provision of social security and health services, the protection of labour rights and access to justice and remedies in the event of violations. On the occasion of the International Labour Conference in June 2011, the High Commissioner, in a statement to the Employers' Group, urged the adoption of robust labour standards to protect domestic workers and to ensure that the rights of migrants are effectively addressed within such standards. On 16 June, ILO adopted the Convention Concerning Decent Work for Domestic Workers, which is supplemented by a recommendation.

33. In 2011, OHCHR took over the rotating Chair of the Inter-Agency Cooperation Group against Trafficking in Persons, and in this capacity the Office organized a side event during the seventeenth session of the Human Rights Council to highlight the respective roles of different United Nations entities in protecting victims of trafficking.

34. The first regional launch of OHCHR's commentary on the Recommended Principles and Guidelines on Human Rights and Human Trafficking took place in Bangkok in December 2010. In 2010 and 2011, OHCHR participated in several regional capacity-building events to promote a human rights-based approach to addressing trafficking in persons. These included a consultation in the Gulf region, held in Abu Dhabi, a consultation on the Arab initiative to combat trafficking held in Qatar, and a training held at the International Training Center on Migration and Combating Trafficking in Human Beings in Minsk. OHCHR is developing a "Fact sheet on human rights and trafficking", to complement the tools already developed on this field.

35. Increasingly, through its field offices, OHCHR has become engaged in migration-related human rights work including through the promotion of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and other relevant instruments, training activities, advocacy, technical advice and other initiatives, including:

(a) The OHCHR office in Colombia assisted the Government in preparing its second report to the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families on its obligations under the Convention;

(b) The Human Rights Adviser to the office of the United Nations Resident Coordinator in the Republic of Moldova intervened in a landmark case regarding the right to family life of migrants living with HIV, through the provision of a range of legal materials to the Supreme Court of Justice. On 22 December 2010, the Supreme Court ruled in favour of the petitioner;

(c) The OHCHR regional office in Central America, together with the United Nations Development Group's Latin America and Caribbean regional technical group on human rights, organized a regional training-of-the-trainers session on

human mobility in Panama from 29 November to 3 December 2010. The session was designed to build the capacity of staff from different agencies operating in Latin America in order to assist regional Governments in developing policies on mixed migration flows that were grounded in human rights norms and standards. In 2011, the OHCHR regional office continued to promote a human rights approach to migration through regional forums such as the seminar on the human rights of migrant populations, organized by the Regional Conference on Migration in Tegucigalpa from 9 to 11 February 2011;

(d) The OHCHR regional office in the Middle East joined the United Nations country team in Lebanon in adopting a voluntary code of conduct for United Nations staff who employ domestic workers. The code requests United Nations staff to abide by 21 specific standards regarding the employment of people who care for families and households;

(e) The OHCHR regional office in South-East Asia worked in partnership with member States of the Association of Southeast Asian Nations (ASEAN), United Nations agencies and civil society organizations on several programmes and activities related to the protection of migrants. On 13 December 2010, in cooperation with the regional thematic working group on international migration, the regional office organized an event to celebrate the twentieth anniversary of the Convention. On 16 December 2010, in cooperation with the National Human Rights Commission of Thailand, the Ministry of Social Development and Human Security, the Royal Thai Police and the Anti-Human Trafficking Network, the regional office organized an event entitled "Join hands to combat human trafficking". The commentary on the Recommended Principles and Guidelines on Human Rights and Human Trafficking was launched during the event. In June 2011, the regional office organized a round table on human smuggling in collaboration with the Global Alliance Against Traffic in Women;

(f) The OHCHR regional office in Europe, in cooperation with UNHCR and UNICEF and with the support of Save the Children, the European Council on Refugees and Exiles and the Supreme Court of Catalonia, Spain, organized a judicial colloquium on the implementation in Europe of article 3 (best interest of the child) of the Convention on the Rights of the Child regarding the situation of migrant children, including unaccompanied and separated children. The colloquium, which was held on 8 July 2011, brought together judges from regional and national courts in Europe to discuss experiences and good practices in best interest determinations in procedures dealing with migrant children. On 22 June, the regional office launched a study on the Convention and related developments in legislation and policy on migration in Europe. On the occasion of the launch, the regional office organized a press conference at the European Parliament;

(g) The OHCHR regional office in Central Asia participated actively in a regional conference on refugee protection and international migration in Central Asia, which was organized by UNHCR in Almaty, Kazakhstan, in March 2011;

(h) The OHCHR regional office in West Africa is a founding member of the regional group on refugee protection and mixed migration, together with the IOM and UNHCR regional offices. Within the framework of the group, several activities have been carried out in the past 12 months to promote the ratification and implementation of the Convention, including the organization of an event, aimed at Government representatives, civil society, United Nations partners and migrants'

organizations, to celebrate the twentieth anniversary of the Convention. The regional office has also facilitated presentations on the Convention at training sessions on migration issues organized by IOM and UNHCR, including, in one instance, a contribution to a joint IOM-UNHCR publication on the protection of people on the move;

(i) The OHCHR regional office in Central Africa, together with the human rights component of the United Nations office in the Central African Republic, IOM and the Economic Community of Central African States, organized, from 6 to 8 December 2010 in Yaoundé, the first subregional dialogue on migration and human rights, gathering representatives of Governments and civil society organizations from Gabon, Equatorial Guinea, Chad, the Congo, the Central African Republic and Cameroon.

IX. Conclusions and recommendations

36. **The Secretary-General:**

(a) **Welcomes the information received from Member States concerning legislation, regulations and policies to strengthen the protection of the human rights of migrants;**

(b) **Encourages States to include in their national reports to the universal periodic review mechanism of the Human Rights Council information on measures to protect the human rights of migrants;**

(c) **Encourages the Special Rapporteur of the Human Rights Council on the human rights of migrants to continue to promote the protection of the human rights of migrants through his dialogue with Member States;**

(d) **Encourages States to ratify all relevant international human rights instruments and, in particular, to ratify and effectively implement the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. The Secretary-General further encourages States parties to make declarations under articles 76 and 77 of the Convention recognizing the competence of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families to receive and consider inter-State and individual complaints;**

(e) **Underlines that States have an obligation under the core international human rights instruments to protect the human rights of all individuals under their jurisdiction, regardless of their nationality or legal status, including migrants who are in an irregular situation;**

(f) **Urges States to protect the fundamental human rights of all migrants in the context of administrative detention and encourages States to explore alternatives to such detention;**

(g) **Underlines the vulnerability of many migrant domestic workers, and calls on States to ensure that there are adequate protection mechanisms in place to protect their human rights.**

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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the interim report prepared by the Special Rapporteur of the Human Rights Council on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover, in accordance with Human Rights Council resolutions 15/22 and 6/29.

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Interim report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Summary

In the present report, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health considers the interaction between criminal laws and other legal restrictions relating to sexual and reproductive health and the right to health. The right to sexual and reproductive health is a fundamental part of the right to health. States must therefore ensure that this aspect of the right to health is fully realized.

The Special Rapporteur considers the impact of criminal and other legal restrictions on abortion; conduct during pregnancy; contraception and family planning; and the provision of sexual and reproductive education and information. Some criminal and other legal restrictions in each of those areas, which are often discriminatory in nature, violate the right to health by restricting access to quality goods, services and information. They infringe human dignity by restricting the freedoms to which individuals are entitled under the right to health, particularly in respect of decision-making and bodily integrity. Moreover, the application of such laws as a means to achieving certain public health outcomes is often ineffective and disproportionate.

Realization of the right to health requires the removal of barriers that interfere with individual decision-making on health-related issues and with access to health services, education and information, in particular on health conditions that only affect women and girls. In cases where a barrier is created by a criminal law or other legal restriction, it is the obligation of the State to remove it. The removal of such laws and legal restrictions is not subject to resource constraints and can thus not be seen as requiring only progressive realization. Barriers arising from criminal laws and other laws and policies affecting sexual and reproductive health must therefore be immediately removed in order to ensure full enjoyment of the right to health.

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I. Introduction

1. Since his previous report to the General Assembly (A/65/255), the Special Rapporteur has undertaken country missions to the Syrian Arab Republic in November 2010 (A/HRC/17/25/Add.3) and Ghana in May 2011. He submitted reports on the right to health and development (A/HRC/17/25) and on the expert consultation on access to medicines as a fundamental component of the right to health (A/HRC/17/43) to the Human Rights Council at its seventeenth session, held in June 2011. He convened an expert consultation and held a public consultation on the right to health of older persons in April 2011, which informed the report submitted to the Council at its eighteenth session in September 2011.

2. The Special Rapporteur has contributed to a number of meetings and conferences on the right to health, including the meeting on human rights and the Global Fund to Fight AIDS, Tuberculosis and Malaria, organized by the Open Society Institute/Joint United Nations Programme on HIV/AIDS (UNAIDS) in New York in March 2011, and the conference on enforcement of the right to health organized by the Central European University in Budapest in June 2011. The Special Rapporteur gave keynote presentations at the Northern Ireland Assembly in September 2010 on the Millennium Development Goals and at the International Drug Policy Consortium seminar, held in London in May 2011, on proportionality in sentencing for drug offences.

3. The Special Rapporteur also held regional civil society consultations in Nairobi, for East Africa; Budapest, for Eastern Europe; and Moscow, the Russian Federation and Central Asia. The consultations allowed the Rapporteur to gather information regarding realization of the right to health in those regions and to disseminate information about the mandate.

II. Background

4. The present report considers the criminalization of certain sexual and reproductive health services, particularly in relation to women, and their impact on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (hereafter, the "right to health"). It also discusses the effect of other legal restrictions and policies affecting conduct and decision-making in the context of sexual and reproductive health. It examines how laws and other legal restrictions are used to regulate abortion, conduct during pregnancy, sexual and reproductive education, and contraception and family planning. It also discusses the negative impact that such criminal laws and other legal restrictions may have on health care, including access to goods, services and information, on the freedoms and human dignity of affected persons, particularly women, and on public health outcomes.

5. The Special Rapporteur decided to address those issues given that the right to sexual and reproductive health is an area in which conduct and decision-making are regulated by the State through a range of criminal laws and other legal restrictions that may violate the right to health.

III. International human rights law and the right to sexual and reproductive health

6. The right to sexual and reproductive health is an integral component of the right to health. The International Covenant on Economic, Social and Cultural Rights emphasizes aspects of the right to sexual and reproductive health in article 12.2 (a). General Comment No. 14 of the Committee on Economic, Social and Cultural Rights states that the right to health includes measures to improve child and maternal health, sexual and reproductive health services, including access to family planning, prenatal and post-natal care, emergency obstetric services and access to information, as well as to resources necessary to act on that information (E/C.2/2000/4, para. 14). Moreover, it notes that women's right to health requires the removal of all barriers interfering with access to health services, education and information, including in the area of sexual and reproductive health (ibid., para. 21). The recommendations of the Committee have consistently supported that approach.[1]

7. The Convention on the Elimination of All Forms of Discrimination against Women[2] requires States to take action to ensure that women are afforded broad equality in, inter alia, education, employment and access to health care. The Convention specifically provides for a proper understanding of maternity as a social function, access to family planning information, and the elimination of discrimination against women in marriage and family relations. Furthermore, article 16.1 (e) mandates that women be provided the same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise those rights.

8. The Convention on the Rights of the Child provides for the protection of the right to health of young persons under the age of 18. Article 24 of the Convention affirms the right to health as established in the International Covenant on Economic, Social and Cultural Rights, which is especially relevant given the importance of sexual and reproductive health to the lives of young women and men.[3] The Convention urges States to ensure prenatal and post-natal care for mothers, develop family planning education and services and ensure the elimination of traditional practices that are "prejudicial to the health of children".[4]

9. Reproductive health rights also feature prominently in the Programme of Action of the 1994 International Conference on Population and Development, the 1995 Beijing Platform for Action and the Millennium Development Goals, which affirm the rights of women to control all aspects of their health, to respect bodily autonomy and integrity and to decide freely in matters relating to their sexuality and reproduction, free of discrimination, coercion and violence. The Beijing Platform for Action states that States should consider removing punitive measures related to sexual and reproductive health. The relationship between improved sexual and reproductive health for women and poverty reduction is particularly emphasized.

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[1] See E/C.12/1/Add.98, para. 43; E/C.12/1/Add.105 and Corr.1, paras. 53 and 54; E/C.12/BRA/CO/2, para. 29; and E/C.12/COL/CO/5, para. 5.

[2] See in particular articles 5, 10 (h), 11, 12.1 and 16.

[3] See United Nations Population Fund, *Eight Lives: Stories of Reproductive Health* (New York, 2010).

[4] United Nations, *Treaty Series*, vol. 1577, No. 27531, article 24; see also CRC/GC/2003/4, para. 31.

Unfortunately, the *Millennium Development Goals Report 2010*[5] declared that progress in parts of the world in some indicative areas, such as adolescent pregnancy and contraceptive use, had slowed and that aid for family planning as a proportion of total aid to health had declined sharply between 2000 and 2008.

10. General Comment No. 14 of the Committee on Economic, Social and Cultural Rights elaborates the concept of reproductive health, stating that women and men have the freedom to decide if and when to reproduce and the right to be informed and to have access to safe, effective, affordable and acceptable methods of family planning of their choice and appropriate health-care services that will, for example, enable women to go safely through pregnancy and childbirth (E/C.12/2000/4, footnote 12). Sexual health is a "state of physical, emotional, mental and social well-being related to sexuality, not merely the absence of disease, dysfunction or infirmity".[6] The Programme of Action of the International Conference on Population and Development states that sexual health includes the right to a satisfying and safe sex life as well as the freedom to decide when and how often to reproduce (A/CONF.171/13, para. 7.2). It also states that sexual health requires a positive and respectful approach to sexuality and sexual relationships, as well as the possibility of having pleasurable and safe sexual experiences, free of coercion, discrimination and violence.

IV. Criminal laws and other legal restrictions affecting the right to sexual and reproductive health

11. Criminal laws are enacted by the State to regulate conduct perceived as threatening, dangerous, or harmful to an individual, to other individuals or society. Such laws represent the strongest expression of the State's power to punish and are among its most intentional acts. Criminal laws punish those who engage in prohibited conduct; they are also intended to deter others from similar conduct, incapacitate and rehabilitate offenders, and provide restitution for victims.

12. The use of overt physical coercion by the State or non-State actors, such as in cases of forced sterilization, forced abortion, forced contraception and forced pregnancy has long been recognized as an unjustifiable form of State-sanctioned coercion and a violation of the right to health.[7] Similarly, where the criminal law is used as a tool by the State to regulate the conduct and decision-making of individuals in the context of the right to sexual and reproductive health the State coercively substitutes its will for that of the individual.

13. States also use other legal restrictions, including provisions in civil and administrative laws to restrict or prohibit access and/or availability of sexual and reproductive health services, goods and information.

14. In their application, criminal laws and other legal restrictions may prevent access to certain sexual and reproductive health-care goods, such as contraceptive methods, directly outlaw a particular service, such as abortion, or ban the provision of sexual and reproductive information through school-based education programmes

[5] United Nations publication, Sales No. E.10.I.7.

[6] Paul Hunt and Judith Bueno de Mesquita, *The Rights to Sexual and Reproductive Health* (Colchester, Essex, University of Essex, 2006).

[7] See CRC/C/15/Add.268, para. 46(e); CEDAW/C/CHN/CO/6, para. 32; E/CN.4/2004/49, para. 25.

or otherwise. In practice, these laws affect a wide range of individuals, including women who attempt to undergo abortions or seek contraception; friends or family members who assist women to access abortions; practitioners providing abortions; teachers providing sexual education; pharmacists supplying contraceptives; employees of institutions that are established to provide family planning services; human rights defenders advocating for sexual and reproductive health rights; and adolescents seeking access to contraception for consensual sexual activity.

15. Criminal laws and other legal restrictions on sexual and reproductive health may have a negative impact on the right to health in many ways, including by interfering with human dignity. Respect for dignity is fundamental to the realization of all human rights. Dignity requires that individuals are free to make personal decisions without interference from the State, especially in an area as important and intimate as sexual and reproductive health.

16. Criminal laws and other legal restrictions affecting sexual and reproductive health may amount to violations of the right to health. Although the present report deals predominantly with the impact of these laws and legal restrictions on women and girls, it by no means discounts similar problems faced by men and boys. Women, however, are generally more likely to experience infringements of their right to sexual and reproductive health[8] given the physiology of human reproduction and the gendered social, legal and economic context in which sexuality, fertility, pregnancy and parenthood occur. Persistent stereotyping of women's roles within society and the family establish and fuel societal norms. Many of those norms are based on the belief that the freedom of a woman, especially with regard to her sexual identity, should be curtailed and regulated (see E/CN.4/2002/83, para. 99). Where women transgress these stereotype-driven norms in the pursuit of sexual and reproductive freedom, they are often punished severely,[6] with resultant adverse effects on their health outcomes and violations of their right to health. The criminal laws and other legal restrictions examined in the present report facilitate and justify State control over women's life, such as forcing women to continue unwanted or unplanned pregnancies.

17. The causal relationship between the gender stereotyping, discrimination and marginalization of women and girls and their enjoyment of their right to sexual and reproductive health is well documented (see E/CN.4/2002/83 and E/CN.4/2004/49). Criminalization generates and perpetuates stigma; restricts their ability to make full use of available sexual and reproductive health-care goods, services and information; denies their full participation in society; and distorts perceptions among health-care professionals which, as a consequence, can hinder their access to health-care services. Criminal laws and other legal restrictions disempower women, who may be deterred from taking steps to protect their health, in order to avoid liability and out of fear of stigmatization. By restricting access to sexual and reproductive health-care goods, services and information these laws can also have a discriminatory effect, in that they disproportionately affect those in need of such resources, namely women. As a result, women and girls are punished both when they abide by these laws, and are thus subjected to poor physical and mental health outcomes, and when they do not, and thus face incarceration.

[8] With the exception of men who have sex with men; see A/HRC/14/20.

18. States most frequently cite two grounds for implementing criminal or other restrictive laws in relation to the right to sexual and reproductive health: public health and public morality. Public morality cannot serve as a justification for enactment or enforcement of laws that may result in human rights violations, including those intended to regulate sexual and reproductive conduct and decision-making. Although securing particular public health outcomes is a legitimate State aim, measures taken to achieve this must be both evidence-based and proportionate to ensure respect of human rights. When criminal laws and legal restrictions used to regulate public health are neither evidence-based nor proportionate, States should refrain from using them to regulate sexual and reproductive health, as they not only violate the right to health of affected individuals, but also contradict their own public health justification.

19. Securing the rights of women is crucial to improving health outcomes for both sexes. However, substantial underreporting of reproductive and sexual health problems is a serious challenge and probably arises for a variety of political, social, and cultural reasons. By generating a chilling effect on the open exchange of information and data collection, criminalization further exacerbates the underreporting of important health indicators. As a result, effectively addressing poor health outcomes is rendered impossible, and difficulties faced by the international community in meeting core development goals are compounded. Moreover, development indicators do not capture the full impact of criminalization because they only address specific quantifiable public health data and exclude deprivations of dignity and autonomy.

20. The use by States of criminal and other legal restrictions to regulate sexual and reproductive health may represent serious violations of the right to health of affected persons and are ineffective as public health interventions. These laws must be immediately reconsidered. Their elimination is not subject to progressive realization since no corresponding resource burden, or a *de minimis* one, is associated with their elimination.

Impact of criminal laws and other legal restrictions on sexual and reproductive health

1. Criminalization and other legal restrictions related to abortion

21. Criminal laws penalizing and restricting induced abortion are the paradigmatic examples of impermissible barriers to the realization of women's right to health and must be eliminated. These laws infringe women's dignity and autonomy by severely restricting decision-making by women in respect of their sexual and reproductive health. Moreover, such laws consistently generate poor physical health outcomes, resulting in deaths that could have been prevented, morbidity and ill-health, as well as negative mental health outcomes, not least because affected women risk being thrust into the criminal justice system. Creation or maintenance of criminal laws with respect to abortion may amount to violations of the obligations of States to respect, protect and fulfil the right to health.

22. The Committee on the Elimination of Discrimination against Women has strongly disapproved of restrictive abortion laws, especially those that prohibit and criminalize abortion in all circumstances (see CEDAW/C/CH/CO/4, para. 19). It has also confirmed that such legislation does not prevent women from procuring unsafe

illegal abortions and has framed restrictive abortion laws as a violation of the rights to life, health and information.[9] The Committee on the Rights of the Child is also concerned about the impact of highly restrictive abortion laws on the right to health of adolescent girls.[10] The Committee against Torture has further stated that punitive abortion laws should be reassessed since they lead to violations of a woman's right to be free from inhuman and cruel treatment.[11] The Human Rights Committee concluded that equality between men and women required equal treatment in the area of health and the elimination of discrimination in the provision of goods and services and addressed the need to review abortion laws to prevent rights violations (see CCPR/C/21/Rev.1/Add.10, paras. 20, 28 and 31). The former Special Rapporteur on the right to health called for removal of punitive measures against women who seek abortions (see E/CN.4/2004/49, para. 30).

23. In States where abortion is criminalized, particular grounds for seeking an abortion may be exempt from criminalization. In the most severe cases, however, abortion is completely criminalized without exception — a situation that exists in only a handful of States — or allowed only to save the life of the woman. Approximately 25 per cent of the world's population lives under legal regimes that prohibit all abortions except for those following rape or incest, as well as those necessary to save a woman's life. Slightly less restrictive legal regimes permit abortion on a number of physical health, mental health and socio-economic grounds, such as poverty and number of children. Finally, abortion is unrestricted on any grounds in 56 States, though limits still exist with respect to how late in pregnancy an abortion will be permitted.[12]

24. Other legal restrictions also contribute to making legal abortions inaccessible. Conscientious objection laws create barriers to access by permitting health-care providers and ancillary personnel, such as receptionists and pharmacists, to refuse to provide abortion services, information about procedures and referrals to alternative facilities and providers.[13] Examples of other restrictions include: laws prohibiting public funding of abortion care; requirements of counselling and mandatory waiting periods for women seeking to terminate a pregnancy; requirements that abortions be approved by more than one health-care provider; parental and spousal consent requirements; and laws that require health-care providers to report "suspected" cases of illegal abortion when women present for post-abortion care, including miscarriages. These laws make safe abortions and post-abortion care unavailable, especially to poor, displaced and young women. Such restrictive regimes, which are not replicated in other areas of sexual and reproductive health care, serve to reinforce the stigma that abortion is an objectionable practice.

25. The World Health Organization (WHO) has confirmed that legal grounds largely shape the course for women with an unplanned pregnancy towards a safe or an unsafe abortion.[14] As legal restrictions primarily influence whether abortion is

[9] See A/53/38/Rev.1, para. 337; and A/54/38/Rev.1, part I, paras. 56, 228 and 393.

[10] CRC/C/15/Add.107, para. 30; CRC/C/CHL/CO/3, para. 55; and CRC/C/URY/CO/2, para. 51.

[11] CAT/C/PER/CO/4, para. 23; CAT/C/NIC/CO/1, para. 16; and CAT/C/CR/32/5, para. 7.

[12] R. Boland, "Second trimester abortion laws globally: actuality, trends and recommendations", *Reproductive Health Matters*, vol. 18, No. 36 (2010), pp. 67-89.

[13] Louise Finer and Judith Bueno de Mesquita, *Conscientious Objection: Protecting Sexual and Reproductive Health Rights* (Colchester, Essex, University of Essex, 2010).

[14] WHO, *Unsafe Abortion: Global and Regional Estimates of the Incidence of Unsafe Abortion and Associated Mortality in 2008*, 6th ed. (Geneva, 2011), p. 2.

safe or not,[15] more unsafe abortions are likely to occur in legal regimes that are more restrictive of abortion. The rate of unsafe abortions and the ratio of unsafe to safe abortions both directly correlate to the degree to which abortion laws are restrictive and/or punitive.[16] Unsafe abortions are estimated to account for nearly 13 per cent of all maternal deaths globally.[14] A further 5 million women and girls suffer short- and long-term injuries due to unsafe abortions,[17] including haemorrhage; sepsis; trauma to the vagina, uterus and abdominal organs; cervical tearing; peritonitis; reproductive tract infections; pelvic inflammatory disease and chronic pelvic pain; shock and infertility.

26. The conditions under which unsafe abortions occur include: limited access to information, particularly concerning when and how legal abortions may be obtained; abortion induced by an unskilled provider in unhygienic conditions or by a health-care worker outside of appropriate facilities; abortion induced by the woman herself or a traditional medical practitioner through insertion of an object into the uterus, drinking of a hazardous substance or violent massage; and incorrectly prescribed medicine with no follow-up or further information provided.[18] Criminalization of abortion creates and perpetuates these unsafe conditions. In more liberal regimes, women are able to legally seek service and treatment through professional health-care providers under safe and medically appropriate circumstances, including the use of medical abortion pills, which allow for safe, self-induced early abortions.

27. Criminal prohibition of abortion is a very clear expression of State interference with a woman's sexual and reproductive health because it restricts a woman's control over her body, possibly subjecting her to unnecessary health risks. Criminal prohibition also requires women to continue unplanned pregnancies and give birth when it is not their choice to do so. States are obliged to ensure that women are not denied access to necessary post-abortion medical services, irrespective of the legality of the abortion undertaken.

28. States are also obliged to protect against infringement of the right to health by third parties. In States where abortion is prohibited, public health and safety regulations regarding abortion, such as provisions for the training and licensing of health-care workers, cannot exist, thus increasing the potential for unsafe abortion practices. Decriminalization, coupled with appropriate regulation and the provision of accessible, safe abortion services, is the most expeditious method of fully protecting the right to health against third-party violations. Additionally, States should take measures to protect those who provide abortions and related services from harassment, violence, kidnappings and murder perpetrated by non-State actors (religiously motivated or otherwise).

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[15] Axel I. Mundigo, "Determinants of unsafe induced abortion in developing countries", in Ina K. Warriner and Iqbal H. Shah, eds., *Preventing Unsafe Abortion and its Consequences: Priorities for Research and Action* (New York, Guttmacher Institute, 2006), pp. 51-54.

[16] WHO, *Safe Abortion: Technical and Policy Guidance for Health Systems* (Geneva, 2003), p. 86.

[17] Lori Ashford, "Hidden suffering: disabilities from pregnancy and childbirth in less developed countries" (Washington, D.C., Population Reference Bureau, 2002). Available from: http://www.prb.org/pdf/HiddenSufferingEng.pdf.

[18] Michael Vlassoff and others, "Estimates of health care system costs of unsafe abortion in Africa and Latin America", *International Perspectives on Sexual and Reproductive Health*, vol. 35, No. 3 (2009), pp. 114-121.

29. States must take measures to ensure that legal and safe abortion services are available, accessible, and of good quality. Safe abortions, however, will not immediately be available upon decriminalization unless States create conditions under which they may be provided. These conditions include establishing available and accessible clinics; the provision of additional training for physicians and health-care workers; enacting licensing requirements; and ensuring the availability of the latest and safest medicines and equipment.

30. Women are entitled to equal health protection afforded by the State as part of the right to health. Regardless of the legal status of abortion, women are entitled to receive access to goods, services and information related to sexual and reproductive health. In particular, they are entitled to have access to quality health services for the management of complications, including those arising from unsafe abortions and miscarriages. Such care must be unconditional even where the threat of criminal punishment is present, and it should not be contingent on a woman's cooperation in any subsequent criminal prosecution, or used as evidence in any proceeding against her or the abortion providers. Laws must not require health-care personnel to report women for abortion-related care to law enforcement or judicial authorities.

31. Absolute prohibition under criminal law deprives women of access to what, in some cases, is a life-saving procedure. Even where a clandestine abortion can be performed in a relatively safe, hygienic setting, it may be financially inaccessible for the most vulnerable women. Poor and marginalized women may instead turn to unsafe, self-induced abortions. Where narrow exceptions to the criminalization of abortion exist, such as to save the life of a woman, criminalization may effectively block access to information about legal abortion services. Women often remain unaware of these exceptions because the stigma surrounding the issue of abortion prevents dissemination and discussion of such necessary information. Legal restrictions on the availability of information relating to abortions also exist because criminal laws often include explicit provisions prohibiting the production and distribution of the information.

32. The provision of health-care goods and services that are of poor quality is a major problem arising from legal regimes criminalizing abortion. In these circumstances, the lack of State and professional regulation of medical practices means that abortions are performed by unskilled practitioners, in unhygienic conditions, in order to evade law enforcement.[19] On the contrary, when performed by trained health-care providers under appropriate conditions, abortion is one of the safest medical procedures available.[20] Criminalization further prevents practitioners from accessing accurate health information and, where exceptions to criminalization exist, the chilling effect created by its associated stigma may prevent health-care workers from seeking training and information on abortion. Health-care workers who choose to perform abortions under these circumstances may accordingly be uninformed and untrained on appropriate abortion procedure and post-abortion care, reducing the quality and availability of legal abortions.

33. Health-care workers have, on occasion, denied women access to legally available sexual and reproductive health services or simply refused to treat women suffering from complications resulting from a clandestine abortion performed

[19] WHO, *Unsafe Abortion: Global and Regional Estimates*, p. 7 (see footnote 14 above).
[20] WHO, *Safe Abortion: Technical and Policy Guidance*, p. 14 (see footnote 16 above).

elsewhere. Owing to the stigma surrounding abortion, health-care workers have also provided erroneous information to women, such as stating that a woman may have only one legal abortion.

34. The marginalization and vulnerability of women as a result of abortion-related stigma and discrimination perpetuate and intensify violations of the right to health. Abortion-related stigma prevents women from seeking abortions and prevents those who undergo abortions from requesting treatment for resulting medical complications. The gross underreporting of abortion — only 35 to 60 per cent are reported — is one indicator of the magnitude of the stigma attached to abortion. Although many social and cultural factors generate and exacerbate the stigma attached to abortion, criminalization of abortion perpetuates discrimination and generates new forms of stigmatization. For example, a woman's infertility may be misunderstood to be the result of a previous abortion, placing "culpability" on the woman as a result of the stigma associated with abortion rather than acknowledging that her infertility may be due to various unrelated health conditions.

35. The stigma resulting from criminalization creates a vicious cycle. Criminalization of abortion results in women seeking clandestine, and likely unsafe, abortions. The stigma resulting from procuring an illegal abortion and thereby breaking the law perpetuates the notion that abortion is an immoral practice and that the procedure is inherently unsafe, which then reinforces continuing criminalization of the practice.

36. The criminalization of abortion also has a severe impact on mental health. The need to seek illegal health services and the intense stigmatization of both the abortion procedure and women who seek such procedures can have deleterious effects on women's mental health.[21] In some cases, women have committed suicide because of accumulated pressures and stigma related to abortion.[22] In jurisdictions where rape is not a ground for termination of pregnancy, women and girls who are pregnant as a result of rape but who do not wish to continue their pregnancy are either forced to carry the pregnancy to term or seek an illegal abortion. Both options can cause enormous anguish. In electing to pursue either option, the overarching threat of being investigated, prosecuted and punished within the criminal justice system has significant negative impacts on the emotional health and well-being of both those who seek abortions and those who do not. Moreover, while the psychological impact of seeking an illegal abortion or carrying an unwanted pregnancy to term is well documented, no corresponding evidence supports the existence of long-term mental health sequelae resulting from elective abortion.[23]

2. Control over and criminalization of conduct during pregnancy and delivery

37. Maternal health, prenatal and post-natal care, and access to information, are all elements of the right to health elaborated under General Comment No. 14. Additionally, article 10.2 of the International Covenant on Economic, Social and Cultural Rights provides that special protection should be accorded to mothers. The Convention on the Elimination of All Forms of Discrimination against Women also recognizes that women should be provided with appropriate services in connection

[21] WHO, *Mental Health Aspects of Women's Reproductive Health* (Geneva, 2008), p. 54.

[22] Ibid, p. 52.

[23] Vignetta E. Charles and others, "Abortion and long-term mental health outcomes: a systematic review of the evidence", *Contraception*, vol. 78, No. 6 (December 2008), p. 436.

with pregnancy. In chapter VII.A., the Programme of Action of the International Conference on Population and Development observes that reproductive health includes access to services that enable women to go through pregnancy and childbirth safely.[24] Despite these positive obligations to support women during pregnancy and post-birth, certain States have proposed or enacted criminal laws or other legal restrictions prohibiting certain forms of conduct, which infringe the right to health of affected women.

38. In certain jurisdictions, pregnant women have been prosecuted for various types of conduct during pregnancy. A number of prosecutions have occurred in relation to the use of illicit drugs by pregnant woman, including under pre-existing laws relating to child abuse, attempted murder, manslaughter and criminally negligent homicide. Criminal laws have also been used to prosecute women for other conduct, including alcohol use during pregnancy, the birth of stillborn babies or the miscarriage of a foetus (see A/HRC/17/26/Add.2, para. 68), failing to follow a doctor's orders, failing to refrain from sexual intercourse, and concealment of the birth.

39. In some instances, civil legislation related to child welfare has been expanded to include punitive sanctions for prenatal drug exposure, where such exposure may provide a ground for the termination of parental rights and the removal of the child upon birth. A pregnant woman's positive toxicology report or clinical signs of drug exposure in newborns, may be regarded as proof of child abuse or neglect under these legislative schemes. In some jurisdictions, health professionals are required to test pregnant women or newborns for drug exposure or may do so provided the woman is given notice. Others have enacted legislation authorizing the institutionalization of women who have used drugs during pregnancy. Health professionals may also be obliged to report positive drug-screening results to the Government.

40. Some States have also criminalized perinatal HIV transmission. For example, in one jurisdiction, a person infected with HIV (and aware of the fact) must "'take all reasonable measures and precautions to prevent the transmission of HIV to others and in the case of pregnant women, the foetus', with criminal sanctions imposed for failure to do so" (see A/HRC/14/20, para. 67). In this case, no exception or defence is allowed in relation to unavailability or lack of access to preventive health-care goods, services and information. Statutes from other jurisdictions, which criminalize HIV transmission generally, may also be applied to perinatal transmission.

41. Criminalization of conduct during pregnancy impedes access to health-care goods and services, infringing the right to health of pregnant women. Where women fear criminal prosecution, they may be deterred from accessing health services and care, as well as pregnancy-related information. For example, women may not seek antenatal services if they are faced with the risk of prosecution from transmitting HIV, which poses a risk to their health and the health of the foetus. This undermines public health objectives related to HIV, because women may refuse testing entirely if they face criminal penalties for transmission.

42. While public health goals can justify some degree of interference with personal freedoms, it has been well documented that the public health goals are not

[24] United Nations, *Treaty Series*, vol. 1249, No. 20378, article 12.

realized through criminalization; rather, they are often undermined by it (see A/HRC/14/20, para. 51). The application of criminal law to regulate conduct such as alcohol consumption during pregnancy is a disproportionate response and an ineffective deterrent. A number of professional medical associations oppose use of the criminal law as a means to address substance abuse by pregnant women, on the grounds of ineffectiveness and disproportionality.[25] In order to realize public health outcomes effectively and simultaneously promote the right to health of women, States should not criminalize such conducts during pregnancy, but rather ensure the provision of health-care goods, services and information that promote health throughout pregnancy and childbirth.

43. Certain criminal laws effectively shift the burden of realizing the right to health away from States onto pregnant women, punishing women for the lack of effective provision of health-care goods, services and education by the Government. For instance, where a woman living with HIV must take all reasonable measures and precautions to prevent the transmission of HIV to the foetus but there is limited or no access to health-care services and antiretroviral treatment, the State fails to provide what is needed for a woman to avoid criminal prosecution. The Special Rapporteur has observed that "where the right to access to appropriate health services ... is not ensured, women are simply unable to take necessary precautions to prevent transmission, which could place them at risk of criminal liability" (see A/HRC/14/20, para. 66). As availability of, and access to, health-care goods and services is the responsibility of States, it is particularly perverse that the criminal law has the potential to punish women for the inadequacy of the Government in this respect.

3. Contraception and family planning

44. WHO defines family planning as a process that allows people to attain their desired number of children and determine the spacing of pregnancies which is achieved through use of contraceptive methods and the treatment of infertility.[26] Use of family planning methods is an integral component of the right to health. Contraception is a method of fertility control by which family planning is affected. Some forms can also be used for the prevention of sexually transmitted infections, primarily through physical barrier methods of contraception such as condoms. Various other forms of contraception exist, ranging from surgical sterilization to pharmaceutical methods, such as the oral contraceptive pill, which do not protect against sexually transmitted infections.

45. Family planning empowers women to make autonomous and informed choices about their sexual and reproductive health. It reduces maternal mortality by delaying pregnancies in young women who would otherwise face an increased risk of health problems and death from early childbearing. Evidence shows that access to voluntary family planning can reduce maternal deaths by between 25 and 40 per cent.[27] Family planning also reduces the number of unsafe abortions and the perinatal transmission of HIV. Condom use not only results in lower incidences of

[25] National Advocates for Pregnant Women, "What's wrong with making it a crime to be pregnant and to have a drug problem?" (9 March 2006).

[26] WHO, Family Planning, Fact sheet No. 351 (April 2011).

[27] World Bank, "Population issues in the 21st century: the role of the World Bank", Health, Nutrition, and Population (Washington, D.C., April 2007).

sexually transmitted infections but, when used correctly and consistently, male condoms are 98 per cent effective toward preventing pregnancy.[26]

46. The global unmet need for family planning remains a significant barrier to achieving rights-related and development goals. WHO estimates that 200 million couples in developing countries would like to delay or stop childbearing but are not using any method of contraception.[26] In 2009, 24 per cent of women of reproductive age in the least developed countries, who were married or in a union, reported not wanting any more children or wanting to delay the birth of their next child.[28] Reasons for the global unmet need included limited access to contraception; limited choice of contraceptive methods; fear or experience of side-effects; cultural or religious opposition; poor quality of available services; and gender-based barriers.

47. Family planning allows women to choose whether and when to reproduce and is thus integral to development and the full participation of women in society. In parts of sub-Saharan Africa, contraceptive use is four times higher among women with a secondary education than among those with no education, and is almost four times higher among women in the richest households than those in the poorest households.[29] One cross-national survey suggests that the percentage of women in the labour force is directly related to national birth rates.[30] Strong links have also been observed between contraception use by women and opportunities to work outside of the home; in one country, the average income growth for women with one to three pregnancies was twice that of women who had been pregnant more than seven times.[30]

48. Criminal laws and other legal restrictions that reduce or deny access to family planning goods and services, or certain modern contraceptive methods, such as emergency contraception, constitute a violation of the right to health. The Convention on the Elimination of All Forms of Discrimination against Women calls upon States to ensure access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning, as well as access to adequate health-care facilities, including information, counselling and services in family planning.[31] In General Comment No. 14, the Committee on Economic, Social and Cultural Rights calls upon States to take measures to "improve child and maternal health, sexual and reproductive health services, including access to family planning … and access to information, as well as to resources necessary to act on that information" (see E/C.12/2000/4, para. 14).

49. In chapter II, principle 8, of the Programme of Action of the International Conference on Population and Development confirms that States should take all appropriate measures to ensure, on a basis of equality of men and women, universal access to health-care services, including those related to reproductive health care, which includes family planning and sexual health. It also stresses the need for participation and notes that family planning programmes are most successful when women are fully involved in the design, provision, management and evaluation of services. It further adds that Governments should remove all unnecessary legal,

[28] *World Contraceptive Use 2010* (POP/DB/CP/Rev2010), available from http://www.un.org/esa/population/publications/WCP_2010/Data.html.

[29] *Millennium Development Goals Report 2010* (United Nations publication, Sales No. E.10.I.7), p. 37.

[30] World Bank, "Population issues", p. 26 (see footnote 27 above).

[31] United Nations, *Treaty Series*, vol. 1249, No. 20378, articles 10 (h), 14 (b).

medical, clinical and regulatory barriers to information and to access to family-planning services and methods. In paragraph 96, the Beijing Platform for Action declares that the human rights of women include their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence.

50. However, in many States access to family planning goods and services is severely curtailed by criminal laws and other legal restrictions. In these jurisdictions, women and men (especially the poor) lack access to safe and effective contraception and are denied the freedom to decide whether or not to reproduce.

51. For example, some States have criminalized the distribution and use of emergency contraception,[32] justifying such laws with claims that emergency contraception is abortifacient. WHO, however, confirms that emergency contraception is a valid form of contraception.[33] Women who carry an unplanned pregnancy to term as a result of such laws also might face adverse physical and mental health outcomes.[34] At the same time, women who lack access to emergency contraception as a result of criminal prohibitions may ultimately be forced to seek clandestine abortions, thus exposing themselves to the associated health risks.

52. Restricting access to surgical methods of contraception also contravenes the obligations of States to ensure that quality services are available and accessible. For instance, tubal ligation, a safe and effective sterilization procedure for women, is prohibited by law in some countries except under narrow circumstances where the procedure is therapeutically necessary. Read in conjunction with laws criminalizing violence causing permanent damage to a limb, this law exposes health professionals who perform the procedure to criminal liability, thus restricting women's access to this method of contraception. Women may instead seek tubal ligation procedures in unlicenced health facilities, potentially placing them at the risk of experiencing health complications and effectively denying access to poor women who cannot afford such procedures.

53. Other laws restricting access to family planning and contraception include a city-wide de facto ban on so-called "artificial" contraception in one jurisdiction, which created significant difficulty for women in accessing reliable forms of birth control (see A/HRC/14/20/Add.1). A total of 70 per cent of the affected population, a majority of whom were poor and marginalized, depended on Government providers for services including female sterilization, oral pills, intrauterine devices and injectables (ibid.). The ban resulted in the absolute deprivation of access to family planning services and contraception for many women and men. In other instances, States require women to obtain their husband's consent and adolescents to obtain parental consent before acquiring various forms of contraception. Other jurisdictions allow pharmacists, and in some cases pharmacies, to refuse to dispense emergency contraception, which is otherwise legally available. These laws directly infringe upon the right of women and girls to make free and informed choices about their sexual and reproductive health and reflect discriminatory notions of women's roles in the family and society.

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[32] Eileen Kelly, "Crisis of conscience: pharmacist refusal to provide health care services on moral grounds", Employee Responsibility Rights, vol. 23, No. 1 (2011), 37-54.

[33] WHO, Emergency contraception, Fact Sheet No. 244 (revised October 2005). Available from http://www.who.int/mediacentre/factsheets/fs244/en/index.html.

[34] WHO, *Mental health*, p. 55 (see footnote 21 above).

54. Women are also entitled to participate in all decisions affecting their sexual and reproductive health at all levels of decision-making. Community-level participation concerning use of contraception has been shown to increase a woman's autonomy and capacity to freely choose to use condoms, not only providing her with a means of controlling fertility but also protecting her own health in preventing sexually transmitted infections.[35]

55. The obligation to respect the right to health requires that States abstain from limiting access to contraceptives and other means of maintaining sexual and reproductive health. States should therefore remove criminal laws and other legal restrictions, including parental consent laws and other third party authorizations, to ensure access to family planning and contraceptive goods, services and information. The obligation to protect requires States ensure that neither third parties nor harmful social or traditional practices interfere with access to prenatal and post-natal care and family-planning (see E/C.12/2000/4, para. 35), or curtail access to some or all contraceptive methods. Finally, the obligation to fulfil includes adopting and implementing a national public health strategy, which includes the provision of "a wide range of sexual and reproductive health services, including access to family planning (...) and access to information (see E/CN.4/2004/49, para. 29)".

4. Education and information on sexual and reproductive health

56. The provision of comprehensive education and information on sexual and reproductive health is an essential component of the right to health and to the realization of other rights, such as the right to education and access to information. Criminal and other laws restricting access to comprehensive education and information on sexual and reproductive health are thus incompatible with the full realization of the right to health and should be removed by States (see E/C.12/2000/4, para. 11). Both women and men are adversely affected by these barriers. Women, however, are disproportionately impacted.

57. General Comment No. 14 places emphasis on access to information because it is a critical component of the right to health (ibid; footnote 8), and particularly guarantees access to sexual and reproductive health information. States are additionally required to provide adequate resources and refrain "from censoring, withholding or intentionally misrepresenting health-related information, including sexual education and information (see E/C.12/2000/14, para. 14)". The Committee on the Elimination of Discrimination against Women has recommended that a comprehensive understanding of the content of sexual and reproductive education encompass the topics of reproductive rights, responsible sexual behaviour, sexual and reproductive health, prevention of sexually transmitted infections including HIV/AIDS, prevention of teenage pregnancies, and family planning,[36] and stressed that education campaigns are urgently needed to combat harmful practices such as female genital mutilation.[37] Comprehensive education and information on sexual

[35] For example, in Kolkata, India, the rate of condom use among sex workers rose from 3 to 90 per cent over the course of seven years as a result of a community-led structural intervention called the Sonagachi Project. See T. Ghosea and others, "Mobilizing collective identity to reduce HIV risk among sex workers in Sonagachi, India: the boundaries, consciousness, negotiation framework", *Social Science Medicine*, vol. 67, No. 2 (2008), pp. 311-320.

[36] See A/56/38, para. 224; A/56/38, para. 303; A/53/38, para. 349; CEDAW/C/PHI/CO/6, para. 28.

[37] See E/C.12/1/Add.78, para. 31; and E/C.12/1/Add.62, para. 39.

and reproductive health is also useful in reducing knowledge gaps between men and women on these issues.[38]

58. The International Guidelines on Sexuality Education of the United Nations Educational, Scientific and Cultural Organization (UNESCO) describe optimal sexual education as "an age-appropriate, culturally sensitive and comprehensive approach ... that include programmes providing scientifically accurate, realistic, non-judgmental information".[39] Moreover, comprehensive sexual and reproductive health education and information should provide "opportunities to explore one's own values and attitudes and to build decision-making, communication, and risk reduction skills about all aspects of sexuality".[39] The Special Rapporteur on the right to education has further emphasized that a comprehensive curriculum requires sensitivity to sexual diversity and a gendered perspective (see A/65/162, para. 23).

59. Laws restricting information about sexual and reproductive health and which censor discussions of homosexuality in the classroom fuel stigma and discrimination of vulnerable minorities.[40] For example, laws and policies that promote abstinence-only education reduce sexual education to images and stereotypes of heteronormativity, given their focus on procreation; some of these programmes even contain explicitly discriminatory content on gender and sexual orientation.[41] In certain instances, teachers have been suspended or threatened with lawsuits for engaging in discussions on "inappropriate" sexual matters with their students when discussing sexual and reproductive health issues in the classroom. In other cases, pursuant to abstinence-only and anti-obscenity policies, school districts, courts and legislators have prohibited civil society organizations from meeting in public schools. Such laws and policies perpetuate false and negative stereotypes concerning sexuality, alienate students of different sexual orientations and prevent students from making fully informed decisions regarding their sexual and reproductive health.

60. Even in jurisdictions where sexual and reproductive health education is permitted in some form, its quality and effectiveness can be severely diminished by policy prescriptions. States have assisted in the dissemination of misinformation on condom use either by distributing materials that contain inaccurate information or by remaining silent on the topic, which allows for the proliferation of contradictory and inaccurate information.[42] Similarly, abstinence-only campaigns that focus only on abstaining from sexual intercourse as a means to avoid sexually transmitted infections and unintended pregnancies provide a narrow and incomplete rather than a comprehensive perspective. Such programmes, which often lack accurate and evidence-based information, have been shown to have a minimal or no effect on reducing the transmission of sexually transmitted infections.

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[38] UNAIDS, *Global Report on the AIDS Epidemic 2008* (Geneva, 2008).

[39] UNESCO, *International Guidelines on Sexuality Education: An Evidence Informed Approach to Effective Sex, Relationships and HIV/STI Education* (Paris, 2009), p. 61.

[40] See the International Centre for the Legal Protection of Human Rights (INTERIGHTS) v. Croatia; Human Rights Watch, Rights at Risk, Executive Summary (2011); and BBC, "Brazil sex education material suspended by President" (25 May 2011). Available from http://www.bbc.co.uk/news/world-latin-america-13554077.

[41] See A/65/162, paras. 68 and 69; and A/HRC/14/20/Add.3, para. 25.

[42] UNESCO, "Review of sex, relationships and HIV education in schools" (2007), pp. 16 and 17.

61. Studies have shown that while few young people have accurate knowledge about HIV/AIDS,[43] women are generally even less well informed than men. In a UNAIDS study of 147 countries, whereas more than 70 per cent of young men were found to recognize that condoms can protect against HIV, only 55 per cent of young women identified condoms as an effective strategy for HIV prevention.[44] Women and girls are disproportionally impacted by legal restrictions to comprehensive sexual and reproductive health education and information, which both reinforces and exacerbates the gender inequalities that the figures demonstrate. The existence of legal restrictions on access to sexual and reproductive health information and education lead to the provision of inaccurate information through informal sources that are often inaccurate and may reinforce negative gender stereotypes. As a result, young women are less prepared for their sexual and reproductive lives, leaving them vulnerable to coercion, abuse and exploitation, as well as to an increased risk of unintended pregnancy, unsafe abortion, maternal mortality, HIV/AIDS and other sexually transmitted infections.[45]

62. In jurisdictions where aspects of sexual and reproductive health are criminalized, the availability and accessibility of related information is greatly restricted. For example, penal codes may contain specific provisions that prohibit dispensing information on the prevention or interruption of pregnancies, or materials that supposedly conflict with notions of morality or decency. Punishments can range from fines to imprisonment. Moreover, the restriction of information relating to health can be an unintended result of laws relating to other information, such as pornography laws, which can also extend to criminalize sexual and reproductive health materials.[46] Thus, public health and empowerment programmes and activities that rely on such information — educational campaigns on HIV/AIDS and sexually transmitted infection prevention, family planning, domestic violence, gender discrimination, female genital mutilation, sexual diversity, overall sexual and reproductive health — are effectively prohibited. Women and girls are most likely to be affected by this gap in available services and programming because they are exposed to a higher risk of HIV/AIDS and sexually transmitted infections, maternal mortality, unsafe abortion and unwanted or unplanned pregnancies.

63. Adequate knowledge about sexual and reproductive health has repeatedly proved to be effecting in lowering rates of maternal mortality; preventing unintended pregnancies, unsafe abortion, HIV/AIDS and other sexually transmitted infections; delaying the onset of sexual intercourse; increasing knowledge about family planning options; and protecting against gender-based violence (see E/C.12/2000/4, para. 21). Empowering women through comprehensive education and information on sexual and reproductive health is also imperative since young women often have less power or control in their relationships, which make them disproportionately vulnerable to coercion, abuse and exploitation.[47] As a tool for empowerment and means to critically examine gender inequalities and stereotypes, comprehensive education and information also becomes a way of eroding deeply entrenched systems of patriarchy; such systems perpetuate violations of women's

[43] UNAIDS, *Global Report 2008*, p. 98 (see footnote 38 above).

[44] Ibid.

[45] UNESCO, *International Guidelines on Sexuality Education*, p. 2 (see footnote 39 above).

[46] Amnesty International, *Left Without a Choice: Barriers to Reproductive Health in Indonesia* (London, 2010).

[47] See UNESCO, *International Guidelines on Sexuality Education*, p. 20 (see footnote 39 above).

rights, including their right to health (see A/65/162, paras. 7-9). Providing women with knowledge and skills relating to their sexual and reproductive health, related education and information enhances their freedom in making informed health-related decisions, and promotes their equal participation in society.

64. States that implement and enforce criminal or other laws to restrict access to sexual and reproductive health information actively reduce access to information and therefore do not meet their obligation to respect the right to health. As a consequence of such laws and the stigma they generate, third parties, such as teachers, publishers, or booksellers may also deny women and girls access to necessary sexual and reproductive health materials. The obligation of States to fulfil the right to health requires that they develop strategies to ensure that comprehensive sexual and reproductive health education and information is provided to everyone, especially women and young girls.

V. Recommendations

65. **In applying a right-to-health approach, States should undertake reforms toward the development and implementation of policies and programmes relating to sexual and reproductive health as required by international human rights law. In that context, the Special Rapporteur calls upon States to:**

(a) **Formulate public health policies and programmes that disseminate evidence-based information regarding sexual and reproductive health, as well as the prevention of perinatal HIV transmission;**

(b) **Develop comprehensive family planning policies and programmes, which provide a wide range of goods, services and information relating to contraception and are available, accessible and of good quality;**

(c) **Decriminalize the supply and use of all forms of contraception and voluntary sterilization for fertility control and remove requirements for spousal and/or parental consent;**

(d) **Take steps to ensure the availability, accessibility and quality of a full range of contraceptive methods, including both pharmaceutical and surgical contraceptive methods;**

(e) **Decriminalize the provision of information relating to sexual and reproductive health, including evidence-based sexual and reproductive health education;**

(f) **Formulate policies to ensure that existing criminal laws, such as those concerning pornography, are not applied to restrict access to, or punish those who provide, evidence-based sexual and reproductive health information and education;**

(g) **Take steps to standardize national curricula to ensure that sexual and reproductive education is comprehensive, evidence-based, and includes information regarding human rights, gender and sexuality;**

(h) **Decriminalize abortion, including related laws, such as those concerning abetment of abortion;**

(i) Consider, as an interim measure, the formulation of policies and protocols by responsible authorities imposing a moratorium on the application of criminal laws concerning abortion, including legal duties on medical professionals to report women to law enforcement authorities;

(j) Ensure safe, good quality health services, including abortion, using services, in line with WHO protocols;

(k) Establish policies and programmes to ensure the accessibility and availability of safe, reliable and good quality services for abortion-related complications and post-abortion care, in line with WHO protocols, particularly in jurisdictions where abortion is criminalized;

(l) Ensure that accurate, evidence-based information concerning abortion and its legal availability is publicly available and that health-care providers are fully aware of the law related to abortion and its exceptions;

(m) Ensure that conscientious objection exemptions are well-defined in scope and well-regulated in use and that referrals and alternative services are available in cases where the objection is raised by a service provider;

(n) Suspend/abolish the application of existing criminal laws to various forms of conduct during pregnancy, such as conduct related to treatment of the foetus, most notably miscarriage, alcohol and drug consumption and HIV transmission.

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Integrated and coordinated implementation of and follow-up to the outcomes of the major United Nations conferences and summits in the economic, social and related fields

Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Report of the Special Rapporteur on the human right to safe drinking water and sanitation

Report of the Secretary-General

Summary

The present report is submitted to the General Assembly by Catarina de Albuquerque, Special Rapporteur on the human right to safe drinking water and sanitation, pursuant to General Assembly resolution 64/292, and in accordance with Human Rights Council resolutions 15/9 and 16/2. It reviews the major issues surrounding the resources available for the realization of the rights to water and sanitation. Section II of the report offers a brief review of the status of resources for the sectors. It then considers several principal sources of financing within the sectors and offers suggestions on how these can be augmented and improved through alignment with human rights principles, and recaps the tremendous benefits of investing in the rights to water and sanitation. Section III considers the related challenge of targeting resources effectively. It offers concrete examples of how stakeholders can better utilize limited resources by keeping human rights principles in mind. Finally, section IV addresses additional challenges to adequate financing, such as institutional fragmentation and lack of transparency.

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I. Introduction

1. The present report is submitted to the General Assembly by the Special Rapporteur on the human right to safe drinking water and sanitation, Catarina de Albuquerque, in accordance with Human Rights Council resolution 15/9, by which the Council requested the Special Rapporteur (then an independent expert) to report annually to the General Assembly, and in pursuance of General Assembly resolution 64/292, in which the Assembly requested the Special Rapporteur, in her report to the Assembly at its sixty-sixth session, to address the principal challenges related to the realization of the human right to safe and clean drinking water and sanitation and their impact on the achievement of the Millennium Development Goals. Pursuant to her mandate, as renewed by the Human Rights Council in resolution 16/2, the Special Rapporteur, is also working on identifying challenges and obstacles to the full realization of the human right to safe drinking water and sanitation.

2. The Special Rapporteur has addressed specific challenges to the realization of the human right to safe drinking water and sanitation in other reports, such as lack of political will and the need for national plans of action (e.g. A/HRC/18/33). Lack of resources is, however, consistently invoked by different stakeholders and is deserving of special attention. Thus, she has chosen to focus on this topic for in the present report.

3. The report tackles the issue of resources for the realization of the human right to safe drinking water and sanitation, querying whether the resources available are enough to realize that right and whether they are being spent appropriately. Overall, the conclusion is that, while additional resources could and should be devoted to the sectors, much more can be done with existing funds through better targeted interventions aligned with human rights obligations. Greater transparency and improved coordination will contribute to better overall knowledge of the resources that are being directed to the sectors and how they are being utilized, thus supporting improved policy design and implementation.

4. The Special Rapporteur underlines the inescapable truth that the realization of human rights, including civil and political rights, costs money. A functioning judicial system, a police force which respects human rights, social policies which protect the most disadvantaged populations and construction of infrastructure are necessary to support a society built on respect for human rights, and have monetary costs. These costs are generally shared by a combination of State support and the payments of individuals. For instance, education and legal aid is often supported by taxes and health care through insurance programmes and taxes.

5. Investments in water and sanitation do not occur in a vacuum. Macroeconomic policies greatly influence State decision-making when it comes to determining how and where resources are spent. Policies that prioritize economic growth in its own right without addressing the economic and social needs of the population can threaten the enjoyment of human rights.[1] For instance, certain economic theories disregard the relevance of income distribution and advocate minimizing public spending based on the assumption that resources can be more efficiently spent by

[1] Radhika Balakrishnan, Diane Elson and Raj Patel, *Rethinking Macro Economic Strategies from a Human Rights Perspective* (Carnegie Council, February 2009), pp. 10 and 11. Available from http://www.cwgl.rutgers.edu/globalcenter/publications/whymes2.pdf.

the private sector.[2] However, a narrow focus on economic growth, without simultaneous attention on whether outcomes are equitable and on building a strong regulatory framework, raises important human rights concerns. Economic growth can play a central role in poverty reduction, the achievement of the Millennium Development Goals and, ultimately, the realization of human rights, but only if the most vulnerable sectors of society are able to participate.

6. The availability of resources for water and sanitation is also closely related to how money is lent and borrowed globally. States required to devote large portions of gross domestic product to service external debt may be restricted in their ability to determine their national budget and resource allocation for essential public services, including water and sanitation. Furthermore, the continued use of conditionalities in these financing arrangements can also distort State priorities and have a deleterious effect on human rights, as further discussed below.[3]

7. Economic policy must be guided by human rights and serve as a tool for their realization. States and international policymakers have a responsibility to consider their macroeconomic policy choices in the light of their human rights obligations. Economic policy should be scrutinized for compliance with human rights standards and such principles as progressive realization, non-retrogression, non-discrimination, transparency, participation and accountability. It is not within the scope of the present report to comment in detail on economic policy, but it is crucial to understand from the outset that financing access to safe drinking water and sanitation for all takes place within, and is impacted by, this larger context.

8. Bearing the larger context in mind, the present report demonstrates how a deeper commitment on the part of States and international donors to incorporate human rights principles into sector financing can aid States in mobilizing, spending and tracking resources. To prepare the report, the Special Rapporteur met with experts in human rights law, water, sanitation, macroeconomics and development in Lisbon in May 2011,[4] and continued to consult bilaterally with a number of experts. The perspectives and expertise they offered have been extremely helpful and the Special Rapporteur is thankful to all those who shared their views.

II. Inadequate funding for water and sanitation

9. The most recent estimates reveal that nearly one billion people lack access to an improved source of drinking water, and 2.6 billion still do not have access to improved sanitation.[5] The Millennium Development Goal target on sanitation is woefully off track and the number of people with no access is on the rise.[6] Even if the 2015 target were met, over 1.7 billion people would still lack access to improved

[2] Ibid.

[3] See also the report of the independent expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights (A/65/260).

[4] The meeting, on macroeconomic policy and the rights to water and sanitation, was organized in conjunction with the Center for Women's Global Leadership, Rutgers University.

[5] World Health Organization (WHO) and United Nations Children's Fund (UNICEF), Joint Monitoring Programme for Water Supply and Sanitation, *Progress on Sanitation and Drinking-Water: 2010 Update*, pp. 6 and 7. Available from www.wssinfo.org/documents-links/documents/.

[6] Ibid., p. 8.

sanitation.[6] The target for water is on track, but progress remains shaky. If achieved, at least 672 million people throughout the world will continue to lack access to improved water sources[7] and the number of people without access to safe water would undoubtedly be much higher since current data do not include measurements of water quality or affordability. Invariably, it is the most marginalized and excluded populations which will continue to be without access; sadly, the progress made towards achieving the Millennium Development Goals has not resulted in significant changes for people living in poverty.

10. In her report to the General Assembly at its sixty-fifth session (A/65/254), the Special Rapporteur explained how the normative content of the rights to water and sanitation can support the achievement of target 7.C of the Millennium Development Goals in a more comprehensive, accountable, participatory, non-discriminatory and sustainable manner. She now stresses that, while the Goals provide concrete development benchmarks, a human rights perspective highlights legally binding obligations and envisions universal, equitable and affordable access.

11. Irrespective of whether the focus is on development goals or human rights, the reality is that, at current funding levels and with current spending patterns, there are not enough resources available to attain either. One study estimates that achieving universal access to water and sanitation by 2015 implies an annual cost of US$ 16.58 billion but notes that this figure is probably an underestimate.[8] Concerning the Millennium Development Goal targets, funding for the water and sanitation sector must increase significantly, perhaps even double, if target 7.C is to be met by 2015.[9] By various estimates, the global cost of meeting the 2015 targets ranges between US$ 6.7 billion to US$ 75 billion annually, depending on factors such as baseline years, population growth and distribution, costs of technology, and whether cost estimates include the costs of new infrastructure, operation and maintenance and/or of building institutional capacity to sustain access.[10] At the national level, it has been estimated that, at a minimum, States should aim to spend 1 per cent of gross domestic product on water and sanitation.[11]

12. Contrasting with these substantial costs, the reality is that neither governments nor donors are committing sufficient resources to water and sanitation services. In 2008, the total international aid commitment to water and sanitation was just US$ 7.4 billion, or 5 per cent of all reported international aid.[12] Compared to spending on health and education, the proportion of international aid devoted to water and sanitation has dwindled over the past decade,[13] even though investments

[7] Ibid., p. 9.

[8] WHO and United Nations Development Programme (UNDP), "Economic and health effects of increasing the coverage of low-cost household drinking water supply and sanitation interventions" (WHO/SDE/WSH/07/05), pp. 21 and 22. Available from www.who.int/water_sanitation_health/economic/mdg10_offtrack.pdf.

[9] World Water Council, Third World Water Forum and Global Water Partnership, *Financing Water for All: Report of the World Panel on Financing Water Infrastructure* (March 2003), foreword. Available from www.financingwaterforall.org/index.php?id=1098.

[10] *UN-Water Global Annual Assessment of Sanitation and Drinking-water 2010: Targeting Resources for Better Results* (Geneva, World Health Organization, March 2010), p. 20. Available from www.who.int/water_sanitation_health/glaas/en/.

[11] UNDP, *Human Development Report 2006: Beyond Scarcity — Power, Poverty and the Global Water Crisis* (New York, 2006), p. 9.

[12] *UN-Water Global Annual Assessment*, p. 14.

[13] Ibid., p. 15.

in water and sanitation have a crucial impact in achieving other Millennium Development Goals, such as reduction of maternal mortality, achievement of universal primary education, empowerment of women and reduction of child mortality. Water and sanitation must figure more prominently in the priorities of Governments, both domestically and internationally, if all of the Goals are to be achieved and the rights to water and sanitation fully realized.

A. Incorporating human rights into traditional financing mechanisms

13. Although human rights law recognizes that States often have limited means, they are nonetheless required to work progressively to fully realize the rights to water and sanitation. The principle of progressive realization acknowledges that fully implementing economic, social and cultural rights is a long-term process, but affirms that States must progress over time, taking deliberate, concrete and targeted steps towards meeting the obligations recognized in the International Covenant on Economic, Social and Cultural Rights,[14] in order to move as expeditiously and effectively as possible towards fulfilment of those rights.[15] Running corollary to this principle is the prohibition of deliberately retrogressive measures.[15] States which renege on their basic obligations and reduce protection for a particular right bear the burden of proof to show that such measures are justified by reference to the totality of the rights provided for in the Covenant and in the context of full use of the maximum available resources.[15]

14. With a view to achieving progressively full realization of the rights to water and sanitation, each State is obliged to take steps to the maximum of its available resources[16] and cannot justify neglect of its human rights obligations based on assertions that it lacks the necessary funds or human resources.[17] Rather, there is a positive obligation for States to mobilize resources from those living within their borders and, where necessary, the international community.[18] Regardless of the funding sources that a State chooses, it must always ensure that there are corresponding mechanisms in place to support transparency, public participation and accountability.

15. It is not enough, however, for States to mobilize a large amount of resources for the water and sanitation sector without also ensuring that they are spent in ways that have the greatest possible impact on achieving universal realization. States should look to maximize results by, inter alia, developing sector-wide strategies and strong regulatory frameworks; working to increase awareness and demand for water and sanitation services; and investing in low-cost, high-efficiency technologies, where appropriate. Emerging strategies in the area of quantitative assessment make it possible to monitor whether the maximum of available resources are directed towards the realization of economic, social and cultural rights, including the rights

[14] General Comment No. 3 (1990) of the Committee on Economic, Social and Cultural Rights, para. 2. *Official Records of the Economic and Social Council, 1991, Supplement No. 3* (E/1991/23), annex III.

[15] Ibid., para. 9

[16] Article 2 of the International Covenant on Economic, Social and Cultural Rights (General Assembly resolution 2200 A (XXI), annex).

[17] General Comment No. 3 (1990) of the Committee on Economic, Social and Cultural Rights, para. 10.

[18] Balakrishnan, Elson and Patel, *Rethinking Macro Economic Strategies*, p. 8.

to water and sanitation.[19] Human rights law also requires States to actively promote non-discrimination.[20] States must prioritize their spending to target groups and communities with the greatest need.

16. While some aspects of the rights to water and sanitation are subject to progressive realization, human rights law also contemplates obligations of immediate effect that should dictate State priorities and decision-making in the short term.[21] In the context of the rights to water and sanitation, this involves, inter alia, prioritizing access to minimum essential levels of water and sanitation on a non-discriminatory basis; adopting and implementing a national water and sanitation strategy; and beginning to monitor the extent of the realization of the rights to water and sanitation.[22]

B. Sources of financing

17. Beyond investing in efficient technology and prioritizing basic needs, States should also look to diversify and optimize sources of funding for the water and sanitation sectors, including tariffs and user contributions, national and local tax revenue, and international assistance, whether in the form of grants or loans. Many projects to extend access will involve a combination of different sources of financing.

18. Incorporating human rights principles, such as accountability, participation and non-discrimination, into financing mechanisms will enhance their impact by ensuring that resources are distributed so as to focus on improving access to water and sanitation services for those who currently have no or inadequate access.

1. Household and user contributions

19. The Special Rapporteur stresses that a human rights framework does not require that water and sanitation services be provided free of charge. Obtaining water at no cost may actually harm low-income households by depriving service providers of the revenue needed to expand and maintain the service, and risks being unsustainable.[23] Further, resistance to payment does not always rest with the most disadvantaged and low-income communities which are not connected to the formal network and thus pay considerably more per litre for water from informal vendors. For the people in those communities, paying for formal service provision is often a

[19] See, for example, E. Felner, "A new frontier in economic and social rights advocacy? Turning quantitative data into a tool for human rights accountability", *International Journal on Human Rights*, No. 9 (December 2008); and S. Fukuda-Parr, T. Lawson-Remer and S. Randolph, "Measuring the progressive realization of human rights obligations: an index of economic and social rights fulfilment" *Economic Rights Working Paper Series*, No. 8 (Storrs, Connecticut, University of Connecticut Human Rights Institute, August 2008).

[20] International Covenant on Economic, Social and Cultural Rights, art. 2, para. 2.

[21] General Comment No. 3 (1990) of the Committee on Economic, Social and Cultural Rights, para. 10.

[22] General Comment No. 15 (2002) of the Committee, para. 37.

[23] World Water Council, *Enhancing Access to Finance for Local Governments: Financing Water for Agriculture*, Task Force on Financing Water for All, Report No. 1 (Marseilles, France, March 2006), p. 6. Available from www.pseau.org/outils/ouvrages/wwc_task_force_financing_water_for_all.pdf (accessed 9 August 2011).

welcome opportunity to have a more regular service and better quality water and sanitation.[24]

20. There are several means by which households may contribute to improving access to water and sanitation. In cases of networked supply, discussions concerning tariffs are particularly important, as most water (and sewerage) utilities cover at least part of their costs through tariffs (i.e. direct payments by households for access to water and sanitation services).[25] Increasingly, utilities are ring-fenced, so that the funds raised from tariffs can only be used on the operation, maintenance and improvement or extension of access to water and sanitation services and cannot be utilized for other government purposes. Some governments also demand that the cost recovery principle be followed, at a minimum insofar as operation and maintenance costs, meaning that all costs related to operating and maintaining water (and in some cases, sanitation) services are paid for through tariffs. User fees however normally do not generate the level of revenue needed to invest in new projects or expand existing infrastructure.[25] Where there is a cost recovery principle in place, it is crucial that the tariffs be structured such that those who cannot afford to pay cost price for the delivery of water (and sanitation) services are assisted through supplementary systems that ensure affordability. Therefore there is an inconsistency in that utilities are expected to deliver services on a commercial basis but at the same time provide an affordable public good.

21. Another form of household contribution in accessing formal water and sewerage services is the connection charges. These costs consist of payments to the utility for the cost of connection to the network (e.g. the physical costs of bringing the pipes to the household) and the cost of improvements within the household to enable such a connection (e.g. in-house pipes, water storage tanks etc.). These costs are often a significant barrier for those living in extreme poverty, with recent research suggesting that in Africa the average connection cost paid to utilities was US$ 185.50, and in Asia, US$ 168.90. Putting these numbers in context, connecting to the water system in, for example, Ghana requires about one year's income.[26] Some countries have decided to reduce the barriers to accessing water and sanitation services by removing this charge for all or some households, or by incorporating some or all of the cost of extending the service into standard service charges. Arguably, expanding the customer base of the water utility has the potential to bring in more revenue than insisting on high connection charges.[27]

22. Household contributions for water and sanitation services in rural areas and in informal settlements can differ quite substantially from household contributions for standard piped water and sewerage provision. In these cases, user costs can range from the construction of communal or individual household provision (a well, communal or household toilet), through the storage of water (buckets, jerry cans, tanks), treatment of water (boiling, chlorine, filters etc.), cleaning, maintenance, emptying of latrines or septic tanks, to the disposal of excreta.

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[24] UNDP, *Human Development Report 2006: Beyond Scarcity — Power, Poverty and the Global Water Crisis* (New York, 2006), pp. 52 and 53.

[25] Organization for Economic Cooperation and Development, *Pricing Water Resources and Water and Sanitation Services* (Paris, OECD Publishing, 2010), p. 70.

[26] R. W. A. Franceys, "Charging to enter the water shop? The costs of urban water connections for the poor", *Water Science and Technology: Water Supply*, vol. 5, No. 6 (London, International Water Association (IWA) Publishing, 2005), pp. 209-216, 213 and 215.

[27] Ibid., p. 216.

23. In any event, the human rights framework obliges States to ensure, first, that the cost of accessing water and sanitation remains affordable and appropriately reflects the needs of marginalized and vulnerable groups and, second, that there is a safety net in place for those who cannot afford to pay or who can only afford to pay a minimal fee. In this context, affordable means that the costs should not significantly detract from a household's ability to pay other essential costs, such as food, housing or health care.[28]

24. As discussed below, various forms of government support, for instance, direct or cross subsidization, can have a positive impact on affordability.[29] Sound, transparent indicators for measuring and monitoring affordability help to further promote accountability in the sector.

> While consideration is given throughout the present report to financing for both water and sanitation, it is worth assessing the reasons why financing for sanitation differs from that for water.
>
> Although the benefits from investing in sanitation are considerably more pronounced than investing only in water, requirements for the water sector are easier to finance than requirements for the sanitation sector, with 37 per cent of aid funding[a] and an average of a mere 20 per cent of government spending on the sectors going to sanitation.[b]
>
> Access to water is a need felt by every woman, child and man, regardless of economic status, and there is no substitute, so people will pay high prices even for poor quality water if there is no alternative. For these reasons, water is generally higher on both the political agenda of governments and list of budget priorities of households, schools, workplaces and clinics than is sanitation, where the economic and health benefits of owning and using a latrine are not fully understood.
>
> Further, sanitation can be a taboo subject, with many cultures finding it difficult to discuss individual needs, particularly those of women. This means that there is not enough information on who does not have adequate access to sanitation and why, making planning and budgeting difficult, if not impossible.
>
> A male head of household, who may be the decision maker in budget prioritization, has often a wider range of options for accessing safe sanitation, whether at the workplace or through cultural norms which make it more acceptable for men to urinate, if not defecate, in the open. This may mean that women's needs are not represented in household budgetary decisions, and their need for convenient and safe sanitation, not only for personal use but also to assist in care of children, the sick and the elderly, is not met.

[28] General Comment No. 15 (2002) of the Committee on Economic, Social and Cultural Rights.

[29] Organization for Economic Cooperation and Development, *Pricing Water Resources and Water and Sanitation Services*, p. 77.

Financing for sanitation is required for all aspects of adequate sanitation, including the purchase or construction of a latrine or toilet, and removal or transport of waste matter (i.e. sewerage or a pit/septic tank emptying system) and its treatment, disposal and/or reuse. While many households may plan effectively for the construction of a toilet or latrine, planning and budgeting for appropriate transport, treatment, disposal and reuse is more complex and requires, particularly in urban areas, a more holistic approach. Wastewater treatment efforts by governments and donors have focused on networked sewerage systems which are often not available to the poorest households, leaving treatment of faecal sludge from latrines and septic tanks unaddressed. More must be done to find appropriate systems of excreta disposal in dense urban environments and rural areas not connected to the sewer system.[c]

For access to sanitation to be sustainable, investments in areas such as awareness-raising are usually necessary to stimulate demand. Providing sanitation infrastructure and fittings where demand is low risks non-use of the facility.[d]

[a] *UN-Water Global Annual Assessment of Sanitation and Drinking-water 2010: Targeting Resources for Better Results* (Geneva, World Health Organization, March 2010), p. 28.

[b] Ibid., p. 29.

[c] Maggie Black and Ben Fawcett, *The Last Taboo: Opening the Door on the Global Sanitation Crisis* (London and Stirling, Virginia, Earthscan Publications Ltd., 2008), pp. 212-216.

[d] See Carolien van der Voorden and Andy Peal, *Public Funding for Sanitation: The Many Faces of Sanitation Subsidies* (Geneva, Water Supply and Sanitation Collaborative Council, 2009); and Sophie Trémolet, Pete Kolsky and Eddy Perez, *Financing On-site Sanitation for the Poor: A Six Country Comparative Review and Analysis* (Washington, D.C., World Bank Water and Sanitation Programme, January 2010).

2. Taxes and government funding

25. While tariffs and user fees can support the provision of water and sanitation services, they rarely cover all associated costs, in particular expansion into new or under-served areas. This holds true for both developed and developing countries. For instance, in Japan, government subsidies account for 7 per cent of investment in these sectors, while in Portugal, 31 per cent of financing for the water and sanitation sectors is provided through financing from the national and municipal budgets, rather than from tariffs (http://insaar.inag.pt/index.php?id=31).[30]

26. Government support is for several reasons therefore necessary to ensure financing. First, it is often the primary source of funding for capital-intensive infrastructure projects, such as building wastewater treatment facilities.[31] Indeed, in cases in which expanding access involves working in unserved and impoverished

[30] Organization for Economic Cooperation and Development, *Pricing Water Resources and Water and Sanitation Services*, p. 72.

[31] World Water Council, Third World Water Forum and Global Water Partnership, *Financing Water for All*.

areas, such as slums or other informal settlements, where initial costs are high and short-term returns on investment are low, States may be the only actors willing and able to deliver on a major scale.

27. Second, government funding in the form of subsidies may be necessary to improve the affordability of services in low-income households. One issue with major human rights implications is whether government subsidy programmes should be universal or targeted in nature.[32] Targeted subsidies aimed at reaching only those in need reflect the reality that budgetary limitations restrict the resources that States can devote to any given sector.[33] Those who are able to contribute on their own, meanwhile, should be expected to do so. Accordingly, States may undertake measures such as means testing to identify those eligible for support.

28. Ensuring that targeted subsidies reach the intended beneficiaries can, however, be complicated and expensive. It is especially important to ensure that targeted subsidies are not a mask for favouritism of certain groups based on political connections, or subject to capture by the elite, as this could reinforce disparities among groups or regions. In this regard, it is especially important that the targeting process and eligibility criteria be fair, reasonable, objective and transparent.[34] Where identifying the persons in need is difficult, a universal system of subsidies may be appropriate in order to guarantee that those most in need of assistance actually benefit. With no system of means testing, universal systems can also be cheaper to administer. Essentially, States must have a system in place to ensure that households requiring assistance in accessing water and sanitation obtain such assistance, taking into account the needs of present and future generations as well as the efficient use of resources.

29. Where individuals or households manage their own localized services, it may be necessary to provide grants or subsidies to ensure sustained access to water and sanitation. In some cases, subsidies are available for the construction of water points or latrines, but seldom for their operation and maintenance. Very little support is provided by Governments to assist households in managing the safe disposal of excreta. Lack of attention to sustainability runs the risk of retrogression and, potentially, violations of human rights law. Approaches such as community-led total sanitation have provided valuable lessons, especially in terms of allocating funding towards capacity-building for the community rather than direct subsidies for latrine construction to ensure that latrines will be both maintained and used effectively

3. International aid

30. Where household contributions and government spending are insufficient to realize the rights to water and sanitation, international aid frequently contributes to

[32] In her forthcoming report to the Human Rights Council on good practices (to be issued as A/HRC/18/33/Add.1), the Special Rapporteur describes common types of subsidies used by States to support the affordability of water and sanitation services.

[33] Thandika Mkandawire, "Targeting and universalism in poverty reduction", Social Policy and Development Programme, paper No. 23 (United Nations Research Institute for Social Development, December 2005).

[34] Report of the independent expert on the question of human rights and extreme poverty (A/HRC/11/9), para. 39.

financing.[35] In order to employ the maximum available resources in compliance with the principle of progressive realization, countries have an obligation to turn to international support when necessary.[36] In turn, countries in a position to assist have an obligation to provide support in a manner consistent with human rights principles.[37] This obligation of international cooperation applies to States parties to relevant human rights treaties in general and does not pertain to any particular State (E/CN.4/2006/WG.23/2, para. 50).

31. While there has been a trend towards greater domestic financing over the past decade, international aid remains the primary source of funding for the water and sanitation sector in many developing countries and for some countries in transition.[38] Meanwhile, the share of international aid going to water and sanitation has decreased over the past decade[39] and deserves higher priority in funding given the significant benefits brought by enhanced access (see below).

32. In the current economic climate, States relying heavily on international aid to support the realization of the rights to water and sanitation should push for the prioritization of funding for water and sanitation within existing aid allocations, while also adopting measures to sustain progress towards realization of those rights even without significant increases in funding.

33. This process begins with strong sectoral planning, including the articulation of both a uniform, sector-wide policy and specific targets. Evidence shows that without a clear national policy framework, effective and efficient service delivery is particularly difficult to achieve.[40] Moreover, when international donors consider which sectors to prioritize they regularly cite the existence of strong sectoral plans as a crucial factor influencing their decision-making.[41] Sectoral planning, meanwhile, should begin with a comprehensive assessment of available resources and the current status of the realization of the rights to water and sanitation, both in terms of overall access as well as affordability, acceptability and quality.[42]

34. If developing countries are obliged to take steps to ensure that international aid allocations for the water and sanitation sectors are sustainable and support progressive realization, international donors have a corresponding obligation to facilitate this process. International aid should adhere to the principles articulated in the Paris Declaration on Aid Effectiveness and the Accra Agenda for Action, ensuring that aid agreements are consistent with international human rights law and

[35] World Water Council, Third World Water Forum and Global Water Partnership, *Financing Water for All*, p. 2.

[36] International Covenant on Economic, Social and Cultural Rights, art. 2, para. 1, and General Comment No. 3 (1990) of the Committee on Economic, Social and Cultural Rights, para. 13.

[37] Charter of the United Nations, Arts. 55 and 56; International Covenant on Economic, Social and Cultural Rights, art. 11; General Comment No. 3 (1990) of the Committee on Economic, Social and Cultural Rights, paras. 13 and 14.

[38] *UN-Water Global Annual Assessment*, p. 46.

[39] Ibid., p. 15.

[40] Ibid., p. 38.

[41] Ibid., p. 22.

[42] For more information on national planning from a human rights perspective, see the report submitted by the Special Rapporteur to the Human Rights Council at its eighteenth session (A/HRC/18/33).

aligning aid priorities with the national policy frameworks of their development partners.[43]

35. In addition, money for water and sanitation is mobilized through loans and grants from international financial institutions and donors. These actors must work to eliminate inappropriate conditionalities attached to these financing agreements.[44] When money for development hinges on the enactment of particular macroeconomic policies, it can lead to cuts in public expenditures that could otherwise support the realization of the rights to water and sanitation.[45] Privatization of government assets, including providers of water and sanitation services, may also feature in conditionalities. While private sector participation is not prohibited under human rights law, without the simultaneous implementation of specific measures to regulate service provision and to maintain affordable access for all, there is significant risk that such participation could reduce incentives to expand and improve access in under-served areas while contributing to lower accountability and higher household costs.

4. Private sector and non-governmental support

36. Private sector financing mainly comes into play to cover gaps in service resulting from a lack of government support. Water vendors, for instance, play a significant, albeit frequently informal, role in unserved communities. In the case of sanitation, private actors are involved in the construction, management or maintenance of individual or public latrines as well as in selling soap and other cleaning products. More generally, the private sector may be involved in bridging financing gaps, offsetting some of the costs associated with the provision of water and sanitation services. Financing by the formal private sector, however, is generally provided on the understanding that such funds will be recouped, which can be a disincentive to delivering services to low-income settlements. Similarly, non-governmental organizations can play an important role, but their contribution in terms of overall financing remains minimal. The Special Rapporteur has addressed in detail the role of the private sector in supporting the realization of the rights to water and sanitation (see A/HRC/15/31), reiterating that human rights law is neutral with respect to economic models and that States are the primary duty bearers and, as such, are responsible for the effective contracting and regulation of private actors.

C. Benefits of investing in water and sanitation

37. In discussing the costs of investing in water and sanitation it is easy to lose sight of the benefits. Indeed, the economic costs of not spending more on water and sanitation are potentially much higher. In developed nations, advances in life expectancy and child mortality accompanied economic growth only after governments began making substantial investments in water supply and, more importantly, in sanitation.[46]

[43] Paris Declaration, para. 16.

[44] Accra Agenda (A/63/539, annex), para. 18.

[45] See report of the independent expert on the effects of foreign debt and other related international financial obligations of States (A/65/260), sect. B.

[46] UNDP, *Human Development Report 2006*, pp. 28-31.

38. The economic benefits of such improvements are staggering. By some estimates, the combined cost-benefit ratio for meeting both the water and sanitation Millennium Development Goal targets is 8 to 1.[47]

39. Universal access to water and sanitation combined could produce benefits of US$ 170 billion in countries non-members of the Organization for Economic Cooperation and Development.[47] These benefits are particularly felt in improved health: for instance, through averted cases of diarrhoea and savings in the treatment of illnesses caused by lack of access to water and sanitation.[48] Indeed, the total global disease burden in terms of disability-adjusted life years could be reduced by at least 10 per cent through investment in improvements to water and sanitation services.[49] The benefits of a household connection also have considerable positive impacts on reducing child mortality; one study carried out in Argentina found that increased household connections reduced child mortality in the poorest municipalities by 24 per cent.[50] The economic benefits of improved access to water and sanitation include increased productivity of adults and school attendance of children, both of which may be affected by chronic illness that stems from poor hygiene.[51]

40. Not all benefits can be moretized. Intangible benefits, such as time saved and dignity gained, warrant careful consideration for their impact on human well-being. The particularly positive impact for women and girls of investing in water and sanitation is crucial for realizing human rights obligations related to gender equality. Environmental benefits are also difficult to put a figure on, but may be enormous, given that improving water and sanitation services helps combat environmental degradation.

III. Targeting resources effectively

A. Human rights and targeting

41. Successfully mobilizing the resources needed to ensure universal access does not by itself guarantee success in fully realizing the rights to water and sanitation. Human rights principles offer three basic considerations which should guide States and international donors when determining how to allocate resources for water and sanitation. First, resources should initially be directed towards meeting obligations of immediate effect.[52] States can then build on that foundation to more fully realize the rights and move to higher levels of service. Second, States and donors must vigorously promote non-discrimination in their water and sanitation programmes and policies, looking to eliminate disparities in access based on, inter alia, race, colour, ethnic origin, religion, gender, economic status or citizenship. Finally, the

[47] Ibid., p. vi.

[48] Ibid., pp. 25-29.

[49] Annette Prüss-Üstün and others, *Safer Water, Better Health: Costs, Benefits and Sustainability of Interventions to Protect and Promote Health* (Geneva, World Health Organization, 2008), p. 7.

[50] R. W. A. Franceys, "Charging to enter the water shop?", p. 210.

[51] Hutton, Haller and Bartram, "Economic and health effects", p. 30.

[52] Draft guidelines for the realization of the right to safe drinking water and sanitation (see E/CN.4/Sub.2/2005/25), para. 2.3 (a).

principle of non-retrogression suggests that resources should contribute to the long-term sustainability of efforts towards universal realization. Quite often this means optimizing the use of existing resources and creating the necessary physical and regulatory infrastructure, as well as the human capacity needed to absorb additional resources in the future.

42. Recent assessments of resources available to the water and sanitation sectors show that they are not always being used to make gains towards realization of the rights. At both the international and national level, the majority of resources are benefiting the relatively well off rather than low-income communities which lack even basic access.[53] Moreover, while States and international donors have made headway in terms of expanding coverage, corresponding investments in operation and maintenance, capacity-building and awareness-raising, all of which support the sustainability of progress towards realizing the rights, are not a priority. In short, money is being spent in the wrong places. The subsections below highlight some of the key human rights arising out of current targeting within the sector and offer suggestions on how States can utilize resources more effectively.

B. Resources are not reaching the most vulnerable and marginalized

43. Meeting the obligations of immediate effect related to the rights to water and sanitation means guaranteeing basic access to all people while prioritizing the most vulnerable and marginalized individuals and communities. Under the current allocation of resources, priority is, however, generally not assigned to these groups, and there is no correlation between the amount of aid a particular country receives and the percentage of the population with adequate access to water and sanitation services.[54]

44. There are several reasons for this, including poor targeting and monitoring as a result of a lack of data at both the international and national level and because donors prioritize certain recipient countries for geopolitical reasons. At the international level, most donors do not know specifically whom their resources are reaching or how they are being targeted. Only slightly more than one half of them indicate that they measure the impact of their aid on the poorest sectors of the population,[55] many reporting that more than one half of their aid commitments to water and sanitation were to middle-income countries.[56] Indeed, 7 of the top 10 recipient countries of aid for water and sanitation report levels of access to improved water and sanitation of more than 90 per cent.[57] While aid to middle-income countries is important, it is crucial to ask whether these significant resources are reaching those who are most marginalized and disadvantaged or whether the funds go towards improving access for the relatively well off.

45. At the national level, few States report that they have developed or consistently apply criteria designed to ensure that sectoral resources are distributed equitably, particularly with respect to sanitation.[58] In India, for example,

[53] *UN-Water Global Annual Assessment*, p. 26.
[54] Ibid., p. 33.
[55] Ibid., p. 35.
[56] Ibid., p. 26.
[57] Ibid. p. 24.
[58] Ibid., p. 34.

166 million people gained access to improved sanitation between 1995 and 2008, yet access among the poorest quintile of the population improved by only around 3 per cent.[59]

46. States and international donors must prioritize in their water and sanitation strategies the obligations of immediate effect related to the rights. Donors should consider shifting their focus and resources to low-income countries in which levels of basic access remain low or, alternatively, developing stronger indicators to ensure that aid allocations to middle-income countries effectively target marginalized and disadvantaged communities. States, meanwhile, should develop national strategies for water and sanitation that emphasize the expansion of basic access, ensuring that the most marginalized and excluded are reached. This will also necessitate heightened financial support for monitoring at both the national and international level in order to track where their funds are going, as well as who benefits. Consultation with communities will also provide important information on which households are the most in need.

47. Current funding patterns disproportionately target networked urban areas. Large systems in urban areas (e.g. wastewater treatment facilities and sewerage pipelines etc.) receive vastly larger sums than basic services in rural areas and deprived urban areas (e.g. latrines, boreholes and hand pumps). Currently, 62 per cent of all of the sectoral aid goes to developing large systems, while only 16 per cent goes to basic systems.[60] This marks a near 10 per cent decline in funding basic services since 2003.

48. Where large-scale systems are planned, it is important to investigate who benefits: do these investments improve services for those who already enjoy access, or do they expand coverage to those who lack it? Piped water systems generally offer the best quality water at the lowest cost per capita owing to economies of scale. These systems must, however, also be made available to those households which are unserved or under-served in peri-urban and informal settlements. At present, the benefits from large-scale systems largely go to middle and upper-income households, reinforcing discrimination and exacerbating disparities between rich and poor.[61]

C. Choosing appropriate technologies

49. Progressive realization of the rights to water and sanitation does not automatically translate into higher costs. Different regions and contexts will require consideration of different technologies. Low-cost alternative technologies exist and further innovation is necessary to devise the most appropriate solutions for different contexts. Alternative technologies may be useful in providing access in an efficient manner, in the short to medium term, to those parts of the population living in remote rural areas or informal urban settlements. Some of these alternative technologies will be low cost, others might be higher cost but more sustainable and thus a better investment over time. These options should be carefully examined to

[59] UNICEF, "Equity fact sheet: MDG 7". Available from www.childinfo.org/files/MDG7.pdf.

[60] *UN-Water Global Annual Assessment*, p. 30.

[61] Sophie Trémolet, Pete Kolsky and Eddy Perez, *Financing On-site Sanitation for the Poor: A Six Country Comparative Review and Analysis* (Washington, D.C., World Bank Water and Sanitation Programme, January 2010).

determine which technology is most appropriate in a given context to fully realize the rights to water and sanitation. Investing in more expensive technologies does not necessarily lead to significant improvements in service.[62] Investing in low-cost, high-efficiency technologies, meanwhile, can dramatically reduce the amount of funding required to achieve the rights.[63]

50. The Special Rapporteur does not categorically reject any particular technology or suggest that expanding or improving access to water and sanitation should be done cheaply. Low-cost solutions for sanitation are often only temporary solutions, as reliable services that yield the long-term public health improvements normally come at a higher cost. States should determine which technology is appropriate based on the objective. If the goal is, for instance, to stabilize access to water in an informal settlement in the short term with the expectation that the community will be reached by more permanent services after a few years, low-cost options such as water kiosks served by utilities might be acceptable for a limited period.

D. Operation and maintenance

51. Directing more resources towards operation and maintenance is essential for the long-term sustainability of efforts to realize the rights to water and sanitation. Seventy-five per cent of the current annual resource needs to achieve the Millennium Development Goal targets for water and sanitation are for replacing and maintaining existing resources.[64] Unfortunately, despite progress in expanding coverage of water and sanitation services, there are clear signs of slippage, whereby communities that had received improved coverage fell into old patterns owing to poor maintenance.[65] In India, for instance, roughly 30 per cent of all communities that had gained improved access to water and sanitation have since lost some or all of that coverage.[66] Throughout Africa, it is estimated that, at any given moment, between 30 and 40 per cent of hand pumps are not functional.[67] Comparatively little international aid currently goes to covering such expenses.[68]

52. Investments that take the life-cycle cost of a water or sanitation improvement into account, or that are specifically directed towards the maintenance and operation of new and existing services, are essential to avoid this sort of retrogression. In

[62] Catarina Fonseca and others, "Life-cycle costs approach for water and sanitation services that last" (WASHCost, April 2011). Available from www.washcost.info/page/121 (log-in required).

[63] Guy Hutton and Jamie Bartram, "Regional and global costs of attaining the water supply and sanitation target (target 10) of the Millennium Development Goals, document WHO/HSE/AMR/08.01 (Geneva, World Health Organization, 2008). Available from http://www.who.int/water_sanitation_health/economic/mdg_global_costing.pdf.

[64] *UN-Water Global Annual Assessment*, p. 21.

[65] Fonseca and others, "Life cycle costs approach for water and sanitation services that last".

[66] Tom Schouten and others, "Taking a service delivery approach to monitoring water supply in low-income areas and implications for the Joint Monitoring Programme" (WASHCost, International Water and Sanitation Centre, 2011), sect. 1.1. Available from www.washcost.info/redir/.../Monitoring_sustainability_JMP_Berlin.pdf (log-in required).

[67] Ibid.

[68] *UN-Water Global Annual Assessment*, p. 32. Of 27 international donors, 8 were able to break down disbursements according to new services, increased service or treatment levels, and maintain or replace existing services, with the latter receiving only 13 per cent of aid.

terms of efficiency, it is also vastly more cost effective to invest in operation and maintenance than to rehabilitate a project after it has failed.[69]

E. Decentralization and capacity-building

53. The long-term success of the realization of the rights to water and sanitation also requires investment in governmental and human capacity, particularly at the local level. Decentralizing responsibility for managing water and sanitation services may boost their efficiency, and thus their sustainability, while also enhancing transparency, accountability and sensitivity to local needs.[70] These attributes of decentralization, however, are not automatic and the central Government maintains an important monitoring role in respect of human rights. In particular, the central Government must ensure that the most marginalized and disadvantaged groups are prioritized, and adopt the necessary measures (e.g. through tied or earmarked transfers to local authorities), so as to avoid funding being diverted to, or captured by, privileged segments of the population or other sectors.

54. Local governments rarely have the financial or technical capacity needed to address the accessibility, affordability and quality of services. Decentralized responsibility for providing water and sanitation services is not effective unless accompanied by support to local authorities as they learn to modify tariff and/or subsidy structures, plan new projects or mobilize additional resources. There are, however, reportedly few resources available to support capacity improvement.[71] Local governments are not routinely assigned resources sufficient to pay for all of their obligations and few are in a position to raise the money themselves. One recent study revealed that only around one third of State expenditure on water and sanitation goes to local government budgets.[72]

55. In order to ensure that they are fully complying with their obligation to progressively realize the rights to water and sanitation to the maximum of available resources, States choosing to decentralize control over water and sanitation must improve the efficiency and the efficacy of the process by devoting more resources to building capacity at the local level. Investments in capacity-building should focus primarily on two areas. First, States and international donors should devote more resources to supporting the ability of local governments to finance projects and expand services independently, while ensuring that resources are spent on those in greatest need. Not simply a question of giving local authorities more money, this may involve improving a local government's creditworthiness and its ability to attract its own external funding.[73]

56. Second, more funding must go towards improving the ability of local actors to absorb additional resources and to manage and deliver water and sanitation services.

[69] Fonseca and others, "Life cycle costs approach for water and sanitation services that last".

[70] Meera Mehta and Dinesh Mehta, *Financing Water and Sanitation at Local Levels* (London, WaterAid, January 2008), p. 45. Available from www.wateraid.org/documents/plugin_documents/financing_water_and_sanitation_at_local_levels.pdf.

[71] *UN-Water Global Annual Assessment*, p. 46.

[72] Mehta and Mehta, *Financing Water and Sanitation at Local Levels*, p. 46.

[73] World Water Council, *Enhancing Access to Finance for Local Governments: Financing Water for Agriculture*, p. 5. See also World Water Council, Third World Water Forum and Global Water Partnership, *Financing Water for All*, p. 15.

This means more practical training in how to operate and maintain water and sanitation improvements as well as administrative training in how to plan and budget new projects, collect fees and, in some cases, implement a subsidy programme.[74]

F. Regulation

57. As with capacity-building, progress towards realization of the rights to water and sanitation cannot be sustainable unless it occurs within the context of a strong regulatory framework.[75] National regulatory frameworks bolster the rights in a number of ways, such as setting clear targets and benchmarks for implementation; clarifying and harmonizing the responsibilities of various actors; setting minimum standards for quality, accessibility and affordability; and improving accountability by creating incentives for compliance.[76] Regulatory frameworks allow governments to prioritize unserved or under-served populations and can form the foundation of subsidy programmes and other safeguards for low-income households[77].

G. Awareness-raising and community outreach

58. The proliferation and sustainability of water and sanitation services depends not only on financing and constructing new facilities. States also have an obligation to educate communities about the hygienic use of water and sanitation services.[78] Devoting resources towards educating communities about the use and benefits of water and sanitation and consulting with them about their specific needs have a number of benefits, including, inter alia, ensuring that the services are used correctly and in a manner that supports their long-term sustainability; improving local ownership, transparency and accountability; ensuring that facilities are acceptable and reflect the cultural needs of the community; and improving overall public health. Despite these benefits, most countries still have limited capacity to

[74] Ibid.

[75] General Comment No. 15 (2002) of the Committee on Economic, Social and Cultural Rights, paras. 16, 47 and 48.

[76] World Water Council, Third World Water Forum and Global Water Partnership, *Financing Water for All*, p. 9. See also Centre on Housing Rights and Evictions (COHRE), American Association for the Advancement of Science (AAS), Swiss Agency for Development and Cooperation (SDC) and United Nations Human Settlements Programme (UN-Habitat), *Manual on the Right to Water and Sanitation* (2008), p. 37; available from www.cohre.org/sites/default/files/manual_on_the_right_to_water_and_sanitation_2008.pdf.

[77] Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ), Working Group on Regulation and Private Sector Participation in Sub-Saharan Africa, "*Sharing the Experience on Regulation in the Water Sector*" (April 2004). Available from www.gtz.de/de/dokumente/en-regulation-water-sector-africa.pdf (accessed 10 August 2011).

[78] General Comment No. 15 (2002) of the Committee on Economic, Social and Cultural Rights, para. 25; and COHRE, AAS, SDC and UN-Habitat, *Manual on the Right to Water and Sanitation*, p. 106.

devote further resources to this area.[79] International support also remains low, representing just 1 per cent of total aid to the sector in 2008.[80]

59. Outreach and awareness-raising also lay the groundwork for more effective expansion of services in the future. Devoting resources to these activities can often translate into greater demand and consequently result in greater political will. The need to create demand is especially relevant with respect to sanitation, where the benefits of improved services are not immediately obvious and the barriers to access can be high.[81] While the benefits of having access to water are more obvious, community outreach can still play an important role by spreading the word about subsidy programmes.[82] Fortunately, States are beginning to recognize the importance of allocating resources to community outreach and awareness-raising, as reflected, for instance, in the 2008 eThekwini Declaration commitment to increase the profile of sanitation and hygiene in national poverty reduction strategies.[83]

IV. Taking accurate stock of resources

60. It is not possible for States to make realistic assessments of where and how resources should be spent until they can accurately take stock of available resources. For a variety of reasons, including institutional fragmentation, a lack of transparency and the absence of mechanisms for monitoring individual contributions, it is currently difficult to accurately measure or track the amount of resources flowing into, or leaking out of, the sector. The present section briefly addresses these obstacles and offers some preliminary recommendations for improvement.

A. Problems of fragmentation

61. Fragmentation, that is, when resources and responsibilities are dispersed across a wide array of institutions and projects, each with their own rules and objectives, presents a central challenge to accurately measuring resources.[84] Because they span a number of sectors, ranging from public health to housing, water and sanitation are especially susceptible in this regard.[85]

62. Fragmentation often occurs horizontally between institutions when sectoral aid is managed by a variety of government ministries; for instance, one regulatory agency may be in charge of managing tariffs, while another monitors water quality.

[79] Stockholm International Water Institute (SIWI) and WHO, *Securing Sanitation: The Compelling Case to Address the Crisis* (Stockholm, 2005), p. 25. Available from www.who.int/water_sanitation_health/hygiene/securingsanitation.pdf.

[80] *UN-Water Global Annual Assessment*, p. 30.

[81] SIWI and WHO, *Securing Sanitation*, pp. 24 and 25.

[82] Sophie Trémolet, "World Water Day: a global inundation of funds is not enough", *The Guardian*, 22 March 2011. Available from www.guardian.co.uk/global-development/poverty-matters/2011/mar/22/world-water-day-sanitation-hygiene.

[83] Commitment No. 4 of the eThekwini Declaration, adopted by the Second African Conference on Sanitation and Hygiene, held in Durban, South Africa, from 18 to 21 February 2008. The text of the Declaration is available from www.africasan3.com/Images/eThekwiniAfricaSan.pdf.

[84] Mehta and Mehta, *Financing Water and Sanitation at Local Levels*, p. 59.

[85] UNDP, *Human Development Report 2006*, pp. 12 and 61.

In such cases, fragmentation is not always particularly inefficient, nor does it pose a serious threat to resource tracking. It becomes a problem, however, when multiple institutions are charged with similar responsibilities, or when one institution is responsible for articulating policy while another controls the purse strings.[86] Horizontal fragmentation also plagues donors at the international level.[87] When negotiating aid packages, for instance, individual donors often seek out personalized, extrabudgetary arrangements with Governments. These agreements may undermine a State's ability to account for all available resources when developing strategies for the sector.[88] The Special Rapporteur has expressed concern about the problems caused by horizontal fragmentation in the reports on her missions to Costa Rica and Egypt (A/HRC/12/24/Add.1 and Corr.1, para. 61, and A/HRC/15/31/Add.3 and Corr.1, para. 13) but discussions with many experts indicate that they are systemic in the water and sanitation sectors around the world.

63. Fragmentation can also be vertical, occurring not just between ministries, but also between national, subnational and local institutions. It often occurs in the context of decentralization when it is not coupled with a coherent national strategy or strong regulatory framework.[89] Financing channels can often become convoluted, leading to costly overlap and duplication,[90] and inconsistent standards across a country may be applied. The Special Rapporteur has commented on the overarching role of the central Government in ensuring the rights to water and sanitation in the context of decentralized arrangements for delivering these services, especially in her reports on her missions to Slovenia and the United States of America.[91]

64. In terms of measuring available resources, fragmentation presents an obstacle in several ways. For one, it is fairly common that a variety of institutions at the national or local level will have an entry point into the water and sanitation sector as part of their broader portfolio of responsibilities. Because in regard to budgeting each agency's contribution to the sector may be couched in terms of these larger responsibilities (e.g. public health initiatives, housing initiatives, environmental initiatives etc.), it is difficult for States to ascertain with precision the amount of resources they devote to water and sanitation.[92] Indeed, this diffusion of responsibility for water and sanitation is a major contributor to under-resourcing.[93] Furthermore, with resources located in several different accounts, it is difficult to monitor disbursements. For example, a Treasury single account, which consolidates

[86] Ibid.

[87] Ibid., pp. 70 and 71.

[88] Tom Slaymaker and Peter Newborne, "Implementation of water supply and sanitation programmes under PRSPs: synthesis of research findings from sub-Saharan Africa" (London, Overseas Development Institute, August 2004). Available from www.odi.org.uk/resources/details.asp?id=1663&title=water-supply-sanitation-prsps-synthesis-research-sub-saharan-africa.

[89] Mehta and Mehta, *Financing Water and Sanitation at Local Levels*, p. 59.

[90] Ibid., p. 28.

[91] A/HRC/18/33/Add.2, para. 48, calling on the Slovenian Government to intervene in municipalities failing to meet human rights obligations related to the Roma population, and A/HRC/33/Add.4 (forthcoming), calling for a mandatory federal standard on affordability in the United States of America.

[92] UNDP, *Human Development Report 2006*, p. 62.

[93] Ibid., p. 61.

all of the Government's cash and provides a trail of how the funds are spent and to whom,[94] offers one way of addressing this challenge.

65. Similarly, with multiple agencies and stakeholders focusing on the same sector, there is a high potential for overlap or wasteful duplication of services. For instance, a report on water point mapping in Malawi found that, as a result of lack of coordination, new water points were drilled next to existing boreholes while under-served areas continued to be neglected.[95] Accordingly, even if it were possible to determine how much a State is spending on water and sanitation at any given moment, it still might be difficult to determine the amount of resources that could be available if this waste were eliminated. Finally, different institutions, including international donors, may have different monitoring mechanisms for water and sanitation that consider various criteria and employ unique methodologies. This poses a serious problem for Governments hoping to implement a national water and sanitation strategy, as it leads to varying assessments of need and cost.[96]

66. The Special Rapporteur has emphasized the importance of national planning and a clear allocation of responsibilities to effectively realize the rights to water and sanitation (see A/HRC/18/33). States must therefore take their obligation to coordinate the work of actors at all levels seriously, and adopt comprehensive sector-wide policies for water and sanitation.[97]

B. Problems of transparency

67. Limited transparency within the water and sanitation sectors represents another key challenge to accurately taking stock of resources. Transparent budgeting for water and sanitation is essential to the sustainability and long-term success of improvements in the sector as it supports predictability, planning and the equitable distribution of resources and facilitates coordination among various agencies. Transparent budgeting can also serve as a platform for advocacy and accountability within vulnerable or unserved communities.[98]

68. A low level of transparency in budgeting is primarily the product of a lack of detail in budgeting. All too often, national budgets do not adequately account for how, where and by whom expenditures in the water and sanitation sector will be allocated. This problem is closely related to horizontal fragmentation, mentioned above, whereby water and sanitation are enveloped within multiple broader portfolios. Even where budgets are sufficiently detailed, access to information about the budget may still be limited. Specific water and sanitation initiatives, such as

[94] Ehtisham Ahmad, "Macro, fiscal and decentralization options to address marginality: reaching the extreme poor", paper prepared for the International Roundtable Conference on Marginality and Extreme Poverty: Towards Inclusive Development for and with the Poorest, held at the Centre for Development Research, University of Bonn, Germany, from 20 to 22 June 2011.

[95] Katharina Welle, "Learning for advocacy and good practice: WaterAid water point mapping: report of findings based on country visits to Malawi and Tanzania", WaterAid Report (London, Overseas Development Institute, December 2005). Available from www.odi.org.uk/resources/download/2952.pdf.

[96] WHO and UNICEF, Joint Monitoring Programme for Water Supply and Sanitation (www.wssinfo.org/country-collaborations/data-reconciliation).

[97] General Comment No. 15 (2002) of the Committee on Economic, Social and Cultural Rights, para. 51.

[98] UNDP, *Human Development Report 2006*, p. 63.

WASHCost (www.washcost.org) and the UN-Water Global Annual Assessment of Sanitation and Drinking Water, are taking important steps towards better monitoring of financing for the sectors and ensuring improved access to information for individuals and institutions. Human rights budget monitoring work has increased substantially in recent years, offering important tools to civil society and other stakeholders to demand access to information and track budget allocations with a view to holding Governments accountable for meeting their human rights obligations. This work involves disaggregating budgets by region and group and can have a profound impact on understanding whether funds are being allocated in line with human rights obligations. Public expenditure tracking is also important for assessing whether funds have actually been spent in line with the stated intention in the budget.

69. Even transparent budgeting can seldom account for the additional off-budget resources spent on water and sanitation by international donors and non-governmental organizations, which often wish to manage their projects independent of Governments. The resources expended on these projects are then almost never recorded in national budgets. In cases in which States rely on international contributions for the majority of their work in the water and sanitation sector, this means that Governments and communities have little knowledge of how much funding is actually available. In Malawi in 2006, for example, it is estimated that off-budget spending by non-governmental organizations was as much as three times the reported annual budget for water and sanitation.[99]

70. A lack of transparency may also impede accurate measurement of resources when States enter into contracts for service delivery with the private sector, particularly as bidding processes and contracts tend not to be made public.[100] The Special Rapporteur has emphasized the importance of transparency in private sector participation, particularly noting that the final contract and terms of reference must be available for public scrutiny and comment (A/HRC/15/31, para. 36). Private contractors have also sometimes intentionally underbid, artificially lowering costs in order to win contracts and then securing more favourable terms in bilateral renegotiations of contracts, a practice which the Special Rapporteur has highlighted as contrary to human rights requirements.

71. In all forms of financing, a lack of transparency can create incentives to siphon off resources, to make or accept bribes, or to engage in other unsavoury behaviour. These activities translate into added costs that are rarely reported, leaving Governments and individual agencies without a clear notion of how much money is actually available for water and sanitation.[101] For instance, Transparency

[99] African Ministers' Council on Water, *Getting Africa on Track to Meet the MDGs on Water and Sanitation: a Status Review of Sixteen African Countries* (December 2006), p. 47.

[100] Nila Ardhianie, "Water privatisation in Indonesia", in B. Balanyá and others (eds.), *Reclaiming Public Water: Achievements, Struggles and Visions from Around the World* (Amsterdam: Transnational Institute and Corporate Europe Observatory, 2005), p. 227; and Violeta Petrova, "At the frontiers of the rush for blue gold: water privatization and the human right to water, *Brooklyn Journal of International Law*, vol. 31, No. 2 (2006), pp. 577-614.

[101] World Water Council, Third World Water Forum and Global Water Partnership, *Financing Water for All*, p. 10.

International has estimated that corruption could increase the cost of meeting Millennium Development Goal target 7.C by 2015 by nearly US$ 50 billion.[102]

C. No measurement of individual contributions

72. As explained above, individual and household contributions play a significant role in the expansion and improvement of access to water and sanitation. The Human Development Report cited the case of China which has seen rapid progress in access to sanitation in rural areas, with 70 per cent of financing for these improvements coming from households.[103] The value of these contributions is, however, rarely factored into State assessments of costs.

73. It is exceedingly difficult to track these contributions and factor them into overall planning and budgeting. While tariffs for water and sanitation services will be relatively easy to monitor, the amount that households spend to build and maintain their access is more difficult, especially in cases of non-networked services. A human rights analysis requires consideration of these costs as they impact the affordability of water and sanitation. This information is essential for understanding which segments of the population require which kind of assistance in order to ensure their access to water and sanitation. The significant level of household contributions often required for gaining or maintaining access to wate and sanitation can function as a barrier for people living in poverty.

V. Conclusions and recommendations

74. **The present report has reviewed various challenges in financing access to water and s nitation for the realization of these human rights. Ensuring water and sanitation for all will require considerably more resources to extend sustainable access to the billions of people who still lack access. Beyond the need for additional resources, however, existing resources must also be better targeted to prioritize the most excluded and marginalized. More transparent budgets and better coordination will also assist in acquiring a more complete understanding of the resources available to tackle the water and sanitation crisis.**

75. **Based on the findings of the present report, the Special Rapporteur recommends that States:**

(a) **Prioritize funding, both in the national budget and for official development assistance, for water and sanitation with a particular focus on extending access to the unserved or under-served. This should include measures to identify the most marginalized, excluded and disadvantaged populations in terms of access to water and sanitation and specific initiatives to improve their situation;**

(b) **Ensure that household contributions, whether tariffs or other forms of contributions, remain affordable, including by establishing supplementary**

[102] *Global Corruption Report 2008: Corruption in the Water Sector* (New York, Cambridge University Press, 2008), p. 10. Available from www.transparency.org/publications/gcr/gcr_2008.
[103] UNDP, *Human Development Report 2006*, p. 128.

systems to support low-income households to gain and maintain access to water and sanitation;

(c) Increase the percentage of international aid allocated to water and sanitation and incorporate a human rights approach;

(d) Ensure that funding to the sectors is reported by all actors, including donors, private providers and non-governmental organizations, in order to obtain a complete picture of the resources allocated to the sectors and how it is being targeted;

(e) Prioritize spending on systems which are more likely to reach the most marginalized and disadvantaged, including ensuring that a piped water supply is also available to informal settlements, and consult with communities on the range of technologies available to ensure sustainable access;

(f) Integrate cost considerations of operation and maintenance into investments with a view to ensuring sustainability;

(g) Invest resources in building the capacity of local authorities in cases of decentralization;

(h) Invest resources in ensuring that regulation can be carried out effectively and with the necessary expertise;

(i) Invest resources in awareness-raising about the importance of water, sanitation and hygiene as a means of creating greater demand for these services;

(j) Ensure coordination, both horizontally and vertically, as well with other stakeholders such as donors, private service providers and non-governmental organizations;

(k) Ensure transparency of budgets and other funding for the sectors, including disaggregated information on which segments of the population have which level of access.

76. The Special Rapporteur encourages donor States, non-governmental organizations and international organizations to ensure that their policies, programmes and projects support efforts towards more coordinated and transparent funding of the water and sanitation sectors.

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Promotion and protection of the rights of children: promotion and protection of the rights of children

Report of the Special Representative of the Secretary-General for Children and Armed Conflict

Summary

The present report is submitted pursuant to General Assembly resolution 51/77 and subsequent resolutions on the rights of the child, the most recent of which is resolution 64/146. In resolution 64/146, the Assembly requested the Special Representative of the Secretary-General for Children and Armed Conflict to submit a report to the General Assembly containing information on her field visits, on the progress achieved and the challenges remaining on the children and armed conflict agenda.

The present report covers the period from August 2010 to August 2011 and provides an overview of progress in the children and armed conflict agenda, followed by an account of the trends and remaining challenges faced. Section II details progress made over the past year, including on awareness-raising, partnership building, information collection and the release of children from armed forces and groups. Section III highlights remaining challenges in the context of the changing nature of conflict and outlines other emerging issues of concern. Section IV describes the way forward in terms of ending violations committed against children. Section V describes actions taken to mainstream the children and armed conflict agenda within the United Nations system Section VI presents a set of actionable recommendations on the protection of children affected by conflict for the attention of the General Assembly.

The annex to the report sets out suggested standard operating procedures outlining minimum measures that may be put in place by national armed forces, as well as multinational and peacekeeping forces, to ensure the protection of children in the course of military operations.

* A/66/150.

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I. Introduction

1. The present report is submitted to the General Assembly pursuant to resolution 51/77 and subsequent resolutions on the rights of the child, the most recent of which is resolution 64/146. The report covers the period from August 2010 to August 2011 and highlights progress made over the past year, current trends and challenges, the way forward on ending grave violations against children in armed conflict and child protection mainstreaming in the United Nations system. The report ends with recommendations aimed at enhancing the protection of children affected by conflict.

II. Children and armed conflict agenda: overview of progress

A. Raising global awareness

2. Raising awareness and promoting the collection of information on the plight of children affected by armed conflict is a core aspect of the mandate given to the Special Representative of the Secretary-General for Children and Armed Conflict by the General Assembly. A multipronged approach to awareness-raising has been undertaken by the Office of the Special Representative during the reporting period.

3. The Special Representative has continued to submit reports on the situation of children and armed conflict to the General Assembly and the Human Rights Council. In addition, the Office of the Special Representative has served as the Secretariat entity charged with the preparation, in close consultation with United Nations partners and country task forces, of the Secretary-General's annual and country-specific reports on children and armed conflict to the Security Council. These reports provide a platform for advocacy and an authoritative and regular account of the progress made and challenges faced with regard to the protection of children in concrete country situations.

4. The Office of the Special Representative supports the development of policy through the preparation and distribution of literature that contributes to policy discussions. Working papers on key aspects of child protection, such as the 2010 paper on internally displaced children, build knowledge and understanding of "grey areas" in the subject by distilling academic and policy experience and supporting advocacy efforts. In addition, together with the United Nations Children's Fund (UNICEF) and other key United Nations partners, the Office of the Special Representative has produced a broad range of guidelines for the field, including guidance and templates for use by field-based United Nations partners in the development of action plans to halt sexual violence and the killing and maiming of children.

5. The Special Representative, in her role as global advocate for children affected by armed conflict, has continued to serve as an independent moral voice for such children. Through field trips, outreach and use of traditional and social media, the Special Representative has managed to relay the concerns of children in conflict areas, mobilize solidarity with children affected by armed conflict and maintain a sense of urgency amongst key decision makers. In addition, during the reporting period her Office organized nine events to raise awareness and knowledge related to children and armed conflict.

6. The Special Representative's emphasis on field missions continues to be central to her advocacy efforts. Field visits enable first-hand assessments of the situation of children, engagement with Governments to support their efforts in protecting children, the securing of concrete commitments from parties to conflict on child protection and support for the implementation of monitoring and reporting activities, and dialogue with relevant parties. During the reporting period and upon the invitation of the Governments concerned, the Special Representative undertook field visits to Somalia (November 2010), Afghanistan (January 2011), the Philippines (April 2011), and Chad (June 2011).

B. Building global partnerships

7. In line with the mandate given to the Special Representative by the General Assembly, building global partnerships and a network of stakeholders is indispensable to enhancing protection. Playing a convening role, the Special Representative brings together those with stakes in the protection of children affected by armed conflict and acts as a bridge between all parties.

8. Maintaining close contact with members of the General Assembly in order to create awareness, take stock of their priorities and strengthen global support for the protection of children affected by armed conflict has been a key priority for the Special Representative. The Group of Friends of Children and Armed Conflict, composed of Member States from all regional groups committed to the child protection agenda, has been critical for this engagement.

9. Continuing consultations with Member States, particularly during the preparation of the Secretary-General's annual and country-specific reports on children and armed conflict, are essential to ensure that the concerns of Member States are taken into account in the drafting of the reports. Going forward, the Special Representative aims to continue this critical dialogue with concerned Member States, in order to strengthen collaboration and ensure buy-in and commitment to the protection of children.

10. Civil society organizations are fundamental to the work of the Office of the Special Representative. They inform the Office of emerging matters of concern, provide innovative suggestions on policy questions and challenges and alert the Office to areas in need of improvement, when necessary. The Special Representative works closely with non-governmental organizations (NGOs) operating at the global and national levels and holds regular meetings with civil society representatives to brainstorm, discuss areas of common concern and keep them abreast of developments on the agenda. Concerted advocacy efforts on specific country situations during the reporting period, including on the situation of children affected by conflict in the Central African Republic, have led to a closer partnership with the authorities, increased international attention and operational commitments by child protection partners on the ground.

C. Collection of information on children affected by armed conflict

11. With the establishment of the monitoring and reporting mechanism on children and armed conflict in 2005 pursuant to Security Council resolution 1612 (2005) and its subsequent implementation in various countries, efforts to gather timely and

reliable information on grave violations against children have borne fruit. The creation of country task forces on the monitoring and reporting of grave violations against children, under the leadership of the highest United Nations authority on the ground, has strengthened United Nations data-gathering capacities and improved the collection and flow of accurate information on six grave violations. This comprehensive framework of information collection contributes to a better understanding of the issue of children and armed conflict and to a greater range of appropriate responses from Headquarters and agencies and programmes in the field. To date, the monitoring and reporting mechanism has been successfully implemented in 15 country situations.

12. As a result of information collection efforts on behalf of the Secretary-General, the Office of the Special Representative has, during the reporting period, prepared six country-specific reports, on the situation of children and armed conflict in Afghanistan, Chad, the Central African Republic, Iraq, the Sudan and Somalia, in consultation with relevant partners. These reports raise the profile of the children and armed conflict agenda and, through their dissemination, provide a solid information base for response by national and international child protection partners and civil society, while providing data for the academic community.

D. Release of children from armed forces and groups

13. The 1996 Graça Machel study on the impact of armed conflict on children (A/51/306 and Add.1) highlighted the recruitment and use of children by armed forces and groups as an alarming characteristic of contemporary conflict and one which constitutes a grave violation. Since then, through advocacy and the focused efforts of national and international child protection partners, numerous children have been separated from armed forces and groups. In 2010, 11,393 children (8,624 male and 2,769 female) benefited from reintegration assistance supported by United Nations agencies, funds and programmes (see A/65/741, para. 16).

14. Marrying advocacy with practical commitment to halt the recruitment and use of children in armed conflict, action plans requested by the Security Council in, inter alia, resolution 1539 (2004), also respond to General Assembly resolution 64/146, in which Member States called on all parties to conflict to take time-bound and effective measures to end all violations and abuses against children. Action plans to end grave violations against children signal a widespread acknowledgement that the impact of armed conflict on children is an affront not only to human rights and development, but also to the peace and security agenda of the United Nations.

15. To date, action plans to halt the recruitment and use of children in armed conflict have been signed with 15 State and non-State parties in 8 countries: Afghanistan, Chad, Côte d'Ivoire, Nepal, the Philippines, Sri Lanka, the Sudan and Uganda. During the reporting period, the Afghan and Chadian security forces signed action plans to release children present in their units and put in place the legal safeguards and practical protocols necessary to prevent the recruitment and use of children. Six action plans have been successfully completed to date. The Office of the Special Representative, together with key United Nations partners, including UNICEF and the International Labour Organization (ILO), supports advocacy for the signature of action plans and provides technical support and guidance for their preparation and implementation.

16. The durable separation of children from armed forces and groups is a complex process that requires appropriate security safeguards, support from child protection partners and the existence of economic as well as social reintegration opportunities. In line with the Paris Principles and Guidelines on Children associated with Armed Forces or Armed Groups, the experience of operational partners has shown that reintegration assistance to children must be tailored to their specific needs. As such, the needs of younger children are different to those of working age (15-17 depending on national legislation). While for younger children reintegration assistance should emphasize schooling combined, where appropriate, with economic assistance to the family, older children usually require vocational training or apprenticeships, which would enable a transition to employment. The Office of the Special Representative, through the Inter-Agency Working Group on Disarmament, Demobilization and Reintegration, co-chaired by the Department of Peacekeeping Operations and the United Nations Development Programme (UNDP), will continue to contribute to policy and guidance development on child disarmament, demobilization and reintegration and to conduct advocacy for the implementation and mainstreaming of such guidance.

E. Enhancing the legal and normative framework for children and armed conflict

17. During the reporting period, the Special Representative worked towards the strengthening of the legal and normative framework for the protection of children, including through the implementation of the campaign for the universal ratification of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. The campaign, Zero Under 18, has been conducted in cooperation with UNICEF, the Office of the Special Representative of the Secretary-General for Violence against Children, and the Office of the United Nations High Commissioner for Human Rights (OHCHR). The Optional Protocol, adopted in 2000, prohibits the forced recruitment of children under the age of 18 by armed forces and armed groups and their direct participation in hostilities.

18. The Special Representative has conducted outreach activities with 34 Member States that are not party to the Optional Protocol and briefed several regional organizations, including the Caribbean Community (CARICOM) and the Organization of Islamic Cooperation (OIC). The Office of the Special Representative organized a treaty signing event during the High-level Plenary Meeting of the General Assembly on the Millennium Development Goals in September 2010 and held a forum in New York on the occasion of the first anniversary of the campaign in May 2010. During a seminar organized by the United Nations Institute for Training and Research, the Office provided technical advice to Member States on the ratification process.

19. Since the launch of the campaign in May 2010, 12 treaty actions have been taken: three Member States have signed the Optional Protocol (Central African Republic, Ethiopia and Iran (Islamic Republic of)), five have ratified it (Cyprus, Djibouti, Gabon, Malawi and Seychelles) and five have acceded to it (Congo, Georgia, Guyana, St. Vincent and the Grenadines and Saudi Arabia). To date, the Optional Protocol has been ratified by 142 States.

20. The Special Representative continues to encourage Member States to become party to other relevant treaties, including ILO Convention No. 182 (1999) concerning the prohibition and immediate action for the elimination of the worst forms of child labour, which defines child recruitment as one of the worst forms of child labour, as well as the African Charter of the Rights and Welfare of the Child (1999), which prohibits child recruitment and upholds the fundamental rights of children.

III. Children and armed conflict: trends and challenges

A. The changing nature of conflict

1. Use of children as instruments of violence in conflict

21. Of growing concern is the use of children — sometimes unbeknownst to them — to carry or wear explosives. The reporting period has seen a steady increase in the number of girls and boys being used by armed groups for such purposes. These children, sometimes as young as eight, are often unaware of the actions or consequences of the acts they are instigated to commit. Such acts often lead to their own death and the killing of civilians, including other children.

22. Little is known of the strategies used by armed actors to access children for these acts of violence. However, anecdotal evidence suggests that families are forced to hand over their children to take part in these actions, and there have also been cases of poor families being induced by armed groups to give their children away, through the promise of money. The use of very young children and/or disabled children for such acts is also a horrifying trend of grave concern. There is an urgent need to fill the knowledge gap and to reach a better understanding of how these acts could be prevented. Concomitantly, there is a need to better address the stigmatization of, and prejudice against, children suspected of collaboration with armed actors, which lead to other violations including beatings, threats to children and their families, acts tantamount to torture, arbitrary arrests and detentions. In this context, particular attention must be given to young children, girls and disabled children.

2. Protection of children during military operations

23. In her last report, the Special Representative emphasized the risks for children during the course of military operations and the need to put in place specific policies and procedures, including tactical directives and standard operating procedures, in order to uphold international humanitarian law and prevent violations against children. New instruments of war, including the use of new technologies, the absence of clear battlefields and identifiable opponents have led to greater risks to children during military operations. The use of aerial attacks, including by drone, and night raids should be reviewed as a matter of priority by all armed actors, in order to minimize incidental loss of civilian life, injury to civilians and damage to civilian objects.

24. The safety and security of children is critical to the legitimacy and credibility of any military activity. This is even more important in the context of peacekeeping or stabilization operations, where consent for the foreign presence is paramount to

the success of the mission. The rules of engagement of armed forces must stipulate the protection of civilians as a foremost consideration in military operations, including in the context of counter-insurgency activities. The principles of proportionality and distinction must be upheld in today's conflict settings by all armed actors; it is only through respect for these principles that the victimization of children can be avoided.

25. The Special Representative reiterates her call for the development of directives and standard operating procedures to ensure that military operations are conducted in conformity with applicable international humanitarian law and safeguard the protection of civilians, including children. During the reporting period, standard operating procedures have been developed by the Ugandan army, with the support of the Office of the Special Representative, to ensure the protection of children captured by, or in the custody of, the armed forces during operations against the Lord's Resistance Army (LRA). The Special Representative reiterates her call to all relevant military actors, including armed forces, multinational forces and peacekeeping operations, to implement as a matter of priority the minimum set of measures highlighted in the annex to the present report.

3. Detention and prosecution of children associated with armed groups

26. States are increasingly arresting and detaining children for alleged association with armed groups. Children who are captured and placed in detention are sometimes kept in conditions which do not meet the minimum standards set out in various international legal instruments.

27. In some situations, States place children in administrative detention, rather than charging them with a criminal offence and bringing them before a court. These children are often detained for long periods without being granted access to a lawyer and without other legal safeguards being applied. Evidence abounds that, when deprived of their liberty, children are particularly vulnerable to human rights abuses, including degrading and inhuman treatment and/or acts tantamount to torture.

28. In other situations, States charge children for allegedly having committed acts during their association with an armed group that are regarded as crimes under national or international law. These children sometimes languish in prolonged pretrial detention without access to legal assistance. In addition, trials before national courts or military tribunals do not generally apply juvenile justice standards and due process safeguards. As a result, children are frequently tried without legal representation or assistance, are not accompanied by their parents or a legal guardian and do not have a clear understanding of the charges brought against them.

29. Given the often forced nature of their association with armed groups, and considering their age, children should be treated primarily as victims, not as perpetrators. Emphasis should be placed on prosecuting individuals based on the concept of command responsibility. States should also prosecute adult recruiters and commanders not only for the crime of child recruitment, but also for other crimes they may have forced children to commit.

30. The detention and prosecution of children for crimes arising from active participation in hostilities should always be a measure of last resort. Many children who are charged with such crimes may themselves have been forced or enticed to join armed groups. During their association with an armed group, children are often

abused, beaten, exploited and manipulated by commanders to commit criminal acts, ranging from minor security offences to war crimes. Although the need for some form of formal accountability is acknowledged, diversion from the judicial system is more suitable for children. Alternatives that take the best interest of the child into consideration and promote the reintegration of the child into his or her family and community include non-judicial mechanisms such as restorative justice measures, truth-telling, traditional healing ceremonies and reintegration programmes.

31. The Convention on the Rights of the Child requires that States seek alternatives to judicial proceedings for children at the national level and that any solution needs to take into account "the child's assuming of a constructive role in society." For children, understanding and acknowledging a past wrongdoing plays a crucial role in their psychosocial development and reintegration process. Accountability based on restorative approaches contributes to a child's rehabilitation and reconciliation with his or her community.

32. The Office of the Special Representative is finalizing a working paper which will explore the issue of the responsibility and accountability of children who have committed criminal acts during armed conflict and the alternatives that can be used to assist children in reintegrating into society. The purpose will be to bring conceptual clarity to the issue by examining the international legal framework related to the detention of children; the treatment and rights of children in detention; and the protection of children who are subject to prosecution and trial. It will also discuss other, non-judicial justice mechanisms with more rehabilitative functions.

B. Child protection and security sector reform

33. In recent years, at the request of Governments or the Security Council, United Nations bodies have played an increasing role in assisting national actors in their efforts to develop accountable and effective security institutions on the basis of non-discrimination, respect for human rights and the rule of law. Support has ranged from facilitating discussions on security arrangements as part of wider negotiations between parties to a prospective peace agreement, to technical advice on and/or support for the implementation of security sector reform plans. In this context, child protection considerations are central to efforts to build rights-based, accountable security systems.

34. The security needs of marginalized or socially excluded groups, particularly those of children and women, should be taken into account when developing plans for security sector reform. Security institutions should integrate the protection of children as a priority area of their mandates; threats to children have often been overlooked, resulting in the exposure of children to grave violations, both in conflict and peacetime. In countries such as the Sudan and South Sudan, the establishment of specialized child protection units in the armed forces has gone a long way to ensuring timely response to cases of violations against children and has helped raise awareness of child rights and welfare among the security forces more widely. Such positive initiatives should be replicated elsewhere. In addition, in order to prevent mobilization of children, recruitment protocols must ensure rigorous age verification: civil registry records, when incomplete or inaccurate, must be supplemented by other procedures to ascertain age.

35. Where armed forces and groups are merged, or demobilized and reintegrated as part of a peace agreement, there is a need to ensure, as a first step in any security sector reform process, that children who may be associated with the parties are separated. The initial stage in such situations is often the registration of combatants. Measures must be systematically put in place to effect age verification or, where reliable State-managed data on birth dates are not available, to establish a solid method of for age determination. However, separating children from armed forces and groups should not be dependent on security sector reform plans. Recruitment and use of children in armed conflict is a violation of international law; there is a normative imperative for children to be identified and separated, inter alia in the context of the action plans mentioned earlier.

36. Awareness-raising and training on child protection is critical to strengthening accountability and respect for human rights within the security forces. Such training must be administered to all actors in the security sector and should cover the international and national normative framework and its application, as well as the care and treatment of children in conflict with the law.

37. Ultimately, ensuring that security institutions uphold and practice child protection is a long-term endeavour, requiring dedicated and focused efforts on the part of national actors: the Government, legislative bodies, the judiciary and civil society. It is through a partnership between national actors, with international support, that child protection can be mainstreamed into the security sector.

C. Protecting education in armed conflict

38. In her previous reports, the Special Representative has consistently noted with concern the increasing trend of attacks on education. Such acts include the partial or total destruction of schools and other education facilities and threatened or actual targeting of education personnel. Attacks on education undermine the establishment of a protective environment for children and their chances for a better future. In addition, violent attacks on girls and targeted attacks on their education undermine their role in society and prevent them from exercising their rights.

39. The reporting period has seen progress in terms of protective measures for education and the rights of children to education. Greater international attention led to the creation in 2010 of the Global Coalition to Protect Education from Attack, composed of United Nations agencies and NGOs. It has helped prevent attacks on education; develop effective response to attacks; improve knowledge, monitoring and reporting; and advocate for international norms and standards and increased accountability. In March 2011, the United Nations Educational, Scientific and Cultural Organization (UNESCO) published an innovative report highlighting the impact of armed conflict on education.[1] The Special Representative welcomes these initiatives and looks forward to working closely with the Global Coalition, UNESCO and other concerned partners to enhance protection from attacks on education.

40. Following the adoption by the General Assembly of its groundbreaking resolution 64/290 on the right to education in emergency situations, the Security

[1] United Nations Educational, Scientific and Cultural Organization, *The Hidden Crisis: Armed Conflict and Education* (Paris, 2011).

Council also strengthened its efforts on this matter. In July 2011, the Security Council adopted resolution 1998 (2011), expanding the listing in the annexes to the annual reports of the Secretary-General on children and armed conflict to perpetrators of recurrent attacks against schools and recurrent attacks or threats of attacks against protected personnel in relation to such facilities. The Special Representative commends the focused attention of the General Assembly and the Security Council on the right of children to access education and urges Member States, together with other child protection partners, to implement the decisions of both bodies.

D. Cross-border efforts to protect children affected by conflict

41. With the flow of civilians and combatants across borders, the regional aspects of conflicts have brought new challenges to the safety, security and protection of children. The activities across borders by armed groups such as the LRA, operating over vast stretches of the central African hinterland, have proven difficult to follow, and as a result the threat posed by them has been concomitantly difficult to contain. Two aspects are worthy of note with regard to the operational response to the challenges posed by cross-border threats.

42. First, there is a need to ensure a well-coordinated monitoring and reporting mechanism, which is able to pull the various country-specific strands of information together in order to develop a comprehensive view of the trends and patterns of violations perpetrated by armed groups. This is critical in order to ensure that appropriate practical measures are taken to protect civilians in affected areas. For instance, during the reporting period, with the support of the Office of the Special Representative, UNICEF enhanced its capacity to facilitate coordination and information-sharing on LRA between child protection teams in the Central African Republic, the Democratic Republic of the Congo, the Sudan and Uganda.

43. Secondly, the reintegration of children formerly associated with armed forces and groups often involves a repatriation component, where the child, operating alongside the armed force or group on foreign soil, returns to his or her country of origin for reintegration into civilian life. In such cases, close contact and coordination between national authorities and child protection partners is essential.

IV. Ending violations and abuses against children in conflict

A. Root causes

44. Efforts to end violations and abuses against children during conflict must stem from a thorough understanding of the structural causes of conflict and the circumstances that give rise to these violations and abuses. Poverty, discrimination, environmental degradation, social and economic marginalization and inequity are some of the factors that create the conditions for children to be associated with armed forces or groups, forcibly or voluntarily.

45. Research has demonstrated a strong correlation between poverty and violent conflict, as well as between violent conflict and poor human development indicators. Millennium Development Goal indicators reveal that countries in

situations of armed conflict account for one third of those living in extreme poverty, half of the children with no access to primary education and half of the children who die before their fifth birthday. While not all poor children in conflict situations become soldiers, poverty is an important motivating factor for children to join armed forces and groups. In some areas, poverty means a lack of access to education and other basic social services and few opportunities for employment and income generation. Children, often with the encouragement of parents and the incitement of armed actors, become combatants in the hope that they will be well fed, housed and protected.

46. Perceptions of discrimination, social injustice, political exclusion and economic disparity are often motivating factors for children to join armed groups. Compounded with collective identity, defined often in ethnic, regional or religious terms, these perceptions become potent mobilizers of communities, including children. Loyalty to the group sometimes becomes a bargaining tool for armed groups, and members of the community are called upon to play their part and contribute their children to the struggle. Children are susceptible to these demands, not only as a result of social pressure or a sense of obligation, but also as a consequence of personal injustices suffered. When crimes against children are committed with impunity, many join armed groups motivated by a desire for revenge.

47. The weak writ of the State, particularly in peripheral areas, is another contributing factor to conflict and has played a role in exposing children to violence. Where the State is challenged in its ability to provide security, deliver basic social services, adjudicate on grievances and facilitate economic activity, local communities turn to alternative forms of authority. Traditional governance structures and/or justice mechanisms, may take precedence over weak statutory institutions. However, traditional governance structures are often not underpinned by the normative standards and protection mechanisms facilitated by the State. Where conflict is occurring, local communities also often form self-defence groups and frequently enlist young children in the community to fight and defend them against external threats.

48. In some societies, protracted violent conflict becomes an end in itself, with a political economy driven by the logic of economic gain and political compromise. In such contexts, children are socialized to accept war as the norm, not the exception, and to seek advancement in the structures it creates. Military commanders become role models for children and the military ethos becomes part of everyday life. Joining an armed group may facilitate social mobility, with access to resources and the ability to wield power and influence in the territory under the control of the armed group. In such situations of chronic conflict, joining an armed group may be seen by children as a legitimate avenue of advancement in a society that offers them few other options.

49. The above are some of the key factors which create an environment that is conducive to children being caught up in conflict. Without addressing the conditions which create conflict at the strategic level, children will continue to be victimized by armed conflict. In this regard, as called for by the General Assembly in its resolution 64/241, States must "enhance complementarity and coordination of national policies and strategies related to security, development, human rights and humanitarian issues, with a view to addressing the short-, medium- and long-term

impact of armed conflict on children in an effective, sustainable and comprehensive manner". The United Nations system and the international community more widely must support the efforts of Governments in building societies that are resilient during conflict, including by contributing to economic development and equity, while supporting initiatives to strengthen social justice and accountability.

B. Prevention of violations and abuses against children

50. At the strategic level, clearly the most effective way of protecting children from the scourge of war is by mitigating the outbreak of armed conflict. Conflict prevention means addressing the root causes of violence and promoting sustainable and equitable human development. As identified in the Machel study and the 2007 10-year review of that study (see A/62/228), sustainable conflict prevention and peacebuilding require going beyond political settlements and strengthening the key vectors of peace, including good governance; the creation of an accountable, legitimate and rule-based security sector; an independent and effective judicial system; the delivery of basic social services; and the creation of an economic environment conducive to employment and wealth creation.

51. Studies suggest that there is a strong correlation between a disproportionately large youth population and civil strife. While demographics alone do not instigate conflict, systematically engaging and targeting young people as the beneficiaries of development programmes, particularly in countries with a youth bulge, could mitigate the risk. The need to promote youth employment and the development of skills among young people during peacetime and in post-conflict periods must be an important component of reconstruction and development strategies.

52. The above are broad and long-term measures that States affected by conflict must address progressively, with the sustained support of the international community. A number of more direct protective steps may be taken by national actors, with international support. During conflict, the creation of child protection networks may assist in helping communities to better protect their children. These networks alert the community to threats or violations and can help develop a community-based response to the consequences of violence. They can also help prevent abuses by raising awareness and forging linkages with entities that can provide protection. Being able to rely on a network of support makes children feel more secure and provides a mechanism for assistance when violations or abuses are committed against them.

53. At the start of any conflict, community leaders should be persuaded to make a special effort to negotiate with parties to ensure that schools are designated as "zones of peace" and are not the targets of attacks or use by military forces or armed groups. In this way, children will be free to pursue their education without abuse or violence. Community-based action to protect schools is another way in which to ensure that children are safe. Maintaining a degree of normalcy in the lives of children during conflict, through the continuation of schooling, sustains their development, while protecting them from recruitment by armed actors.

C. Addressing accountability at the global level

54. Since the 1996 Machel study, the international community has made significant progress in strengthening the legal framework for the protection of children in armed conflict and in bringing perpetrators to justice. Violations against children have been addressed by the International Criminal Court, the International Criminal Tribunals for the former Yugoslavia and for Rwanda and the Special Court for Sierra Leone. These international and hybrid courts, along with mixed chambers such as those established in Bosnia and Herzegovina, have been critical in complementing national justice mechanisms in addressing crimes against children.

55. It must be emphasized that international efforts alone cannot achieve durable results in the fight against impunity. Sustained accountability for crimes committed can only be reached through the ownership of the people and justice system of the nation concerned, in conformity with international standards. In societies emerging from conflict, where State institutions and the social fabric have been weakened by war, the international community has an important role to play in supporting national efforts to strengthen the justice sector and the rule of law more broadly. Developing the capacity of societies to deal with violations through an effective justice system is the only way to ensure that justice will be sustainable.

56. The international community should also support reparations mechanisms in countries emerging from armed conflict. Reparations are a way of providing social justice in post-conflict societies, and are an effective additional accountability mechanism. This is particularly the case in areas where access to justice and redress through the courts is difficult or not possible because of a weak judicial system or a lack of confidence in the judiciary, where the identity of perpetrators are unknown, or where, for political reasons, perpetrators of human rights abuses are exempted from judicial accountability processes.

D. The need for a protection dialogue

57. In its resolution 64/146, the General Assembly called on States and other parties to armed conflict that engage in violations and abuses against children in contravention of applicable international law to take time-bound and effective measures to end such practices. The delivery of protection and assistance to child victims of violations and abuses in armed conflict by States, together with United Nations entities, civil society and regional organizations, necessitates a dialogue among all partners involved, in order to ensure coordination and the establishment of appropriate response mechanisms. Partnerships with Governments are critical in ending grave violations against children. In this regard, inter-ministerial committees composed of relevant Government entities can serve as effective forums for coordination and dialogue with United Nations counterparts.

58. Where relevant and possible, dialogue with non-State actors may take place in the context of peace processes. However, working closely with the relevant Governments, dialogue on the establishment of time-bound and effective measures to protect child victims — including action plans to halt particular violations — should be explored regardless of the status of political discussions. Contexts vary and experience has shown that innovation is a key ingredient for effective protection measures to be put in place. In the absence of a peace process Governments, as the

primary duty-bearers for the protection of children, should work in partnership with the United Nations to ensure that time-bound and effective measures, including action plans, are put in place by all parties.

E. Targeted and graduated measures

59. Efforts to strengthen the links between the work of the Security Council on children and armed conflict and its sanctions regime is an area of ongoing work. Targeted and graduated sanctions should be applied against persistent perpetrators as a measure of last resort, when all other means have failed to end impunity for crimes committed against children. In its most recent resolution on children and armed conflict (resolution 1998 (2011)), the Security Council reaffirmed its readiness, expressed in previous resolutions and presidential statements, to adopt targeted and graduated measures against persistent perpetrators of grave violations against children, and increasingly to integrate violations against children into its sanctions regimes.

60. In response, in May of this year, the Special Representative briefed the Security Council Committee pursuant to resolutions 751 (1992) and 1907 (2009) concerning Somalia and Eritrea, proposing the addition of grave violations against children as designation criteria for sanctions. The Security Council, by its resolution 2002 (2011), expanded the sanctions regime in Somalia to include grave violations against children in armed conflict in its designation criteria. Closer collaboration between the Security Council Committee pursuant to resolutions 751 (1992) and 1907 (2009) concerning Somalia and Eritrea and the Security Council Working Group on Children and Armed Conflict will enhance coherence in the work of the Council and strengthen its actions against impunity. Going forward, it will be critical to expand this practice to other sanctions committees which address persistent perpetrators of grave violations against children.

F. Role of Governments in protecting children affected by conflict

61. Governments bear the primary responsibility for the protection of children and, more widely, of civilians. A number of steps must be taken to build a protective environment for children, before, during and after conflict. Foremost is the establishment of a national legal framework enshrining international norms that upholds the rights of children and protects them from the consequences of conflict. In this regard, the ratification and subsequent implementation of the Convention on the Rights of the Child, inter alia through translation into national legislation, followed by the necessary administrative, budgetary and social policy adjustments, is a key foundational step towards the protection of children. Further child-specific legal instruments, such as child protection codes or acts, which include a gamut of measures from juvenile justice to punitive measures against violations and abuses of child rights, have provided an additional layer of legal protection in States affected by conflict.

62. Where societies are emerging from conflict, transitional justice mechanisms should be put in place by national authorities to ensure that wartime crimes against children are accounted for. Transitional justice mechanisms based on judicial processes may be complemented by non-judicial accountability mechanisms. These

mechanisms, which can include truth-seeking and restorative approaches, can provide the cathartic effect required for reconciliation and are appropriate for child perpetrators who, as children, should be spared from prosecution. The recently passed Victims Law in Colombia, for example, is a laudable initiative aiming at ensuring that child victims of violations and abuses during conflict receive reparations from the Government.

G. Advocacy

63. With significant challenges remaining to the protection of children affected by conflict, advocacy is critical in developing awareness and instigating behaviour change with a view to ultimately ending grave violations against children in conflict. The Special Representative's advocacy efforts will continue to highlight key issues of concern with a view to creating greater political and donor support for Governments and operational partners working on the protection of children affected by conflict.

64. Advocacy efforts will focus on a number of key priority areas. These include the delivery of comprehensive and long-term reintegration assistance for children, based on identified programmatic best practice; the rights of internally displaced children, particularly with regard to access to education and security; the rights of children in contact with justice systems, both as victims and perpetrators; the relationship between conflict and poverty, with particular reference to Millennium Development Goal indicators; and the protection challenges raised by the changing nature of conflict and the exposure of children to military operations.

65. The Special Representative will continue to engage with Member States, experts and the academic community to foster greater knowledge and develop and refine knowledge and understanding of emerging challenges to the protection of children in conflict.

V. Mainstreaming child protection within the United Nations system

A. Child protection in United Nations field missions

66. A key priority for the Special Representative has been the mainstreaming of child protection expertise within the United Nations system, in line with her mandate to contribute to the coordination of efforts and to promote the collection of information on the plight of children affected by armed conflict. Within the Secretariat, the Department of Peacekeeping Operations and the Department of Political Affairs, two departments with a field presence, have appointed focal points to ensure that child protection concerns are factored into their departmental policy and operational activities, while working closely with the Office of the Special Representative. In 2011, the Department of Peacekeeping Operations obtained a regular post for the child protection focal point, enabling the provision of dedicated and sustained support to field-based child protection advisers and the mainstreaming of child protection at Headquarters. Given the increasing child protection challenges as outlined in the present report, there is a critical need for a consistent focus on child protection within relevant departments of the Secretariat. The Special

Representative encourages key Secretariat bodies, including the Department of Political Affairs, OHCHR and the Peacebuilding Support Office to follow the example of the Department of Peacekeeping Operations.

67. The Department of Peacekeeping Operations-Department of Field Support child protection policy directive, established in 2009 and outlined in the previous report of the Special Representative (A/65/219), has guided child protection activities in peacekeeping operations and contributed to the collection of accurate, objective, reliable and verifiable information on grave violations against children. The policy directive defines the roles and responsibilities of child protection personnel in peacekeeping operations and provides a clear framework for the division of labour and complementarity between peacekeeping operations and United Nations agencies, funds and programmes. It is expected that the policy directive will be reviewed and updated during the next reporting cycle. This review may constitute an opportunity to consider the development of joint child protection guidance by the Department of Peacekeeping Operations, the Department of Field Support and the Department of Political Affairs, applicable to all United Nations field missions. Mainstreaming child protection in special political missions and peacebuilding offices managed by the Department of Political Affairs is critical, as they are called to play an increasing child protection role in post-conflict environments and during the complex transition from peacekeeping to peacebuilding.

68. Since the adoption of the child protection policy, the Department of Peacekeeping Operations has developed a policy implementation plan to facilitate sustained and systematic implementation of the child protection mandate in the field and at Headquarters. Among the key priorities identified in the plan is the strengthening of training activities for peacekeeping personnel. In this regard, the Department is partnering with the Office of the Special Representative, UNICEF and Save the Children to strengthen and develop predeployment and in-mission training programmes and material.

69. The support of the General Assembly for the deployment and role of child protection advisers has been significant, including through resolution 62/141 on the rights of the child and the Special Committee on Peacekeeping Operations. Child protection advisers have been appointed in seven field missions. In this regard, it is notable that most mandates for United Nations peacekeeping and political missions now include a child protection dimension. The commitment to protect children has increasingly been reflected in the child protection staffing and resources approved by the General Assembly for United Nations field operations, through the work of the Fifth Committee, with the advice of the Advisory Committee on Administrative and Budgetary Questions and support of the Special Committee on Peacekeeping Operations. The Special Representative appreciates the critical support provided by the General Assembly to the mainstreaming of child protection in United Nations activities and urges continued support for the same.

B. Partnerships on child protection in the United Nations system

70. As chair of the Headquarters Task Force on Children and Armed Conflict, the Special Representative convenes 16 departments, agencies, funds and programmes in order to consult on child protection issues of concern and the preparation of the

annual report of the Secretary-General on children and armed conflict. These encounters help identify areas requiring further advocacy, mainstreaming and/or increased cooperation and coordination. Through the country task forces, the Office of the Special Representative has continued to support field-based child protection efforts, including through the provision of technical support, as well as support for training, advocacy and fund-raising.

71. The close partnership between UNICEF and the Office of the Special Representative continued during the reporting period. This cooperation has been critical for the children and armed conflict agenda, at both the global and field levels, and technical coordination continues to bear fruit in terms of guidance for the field, the implementation of action plans and the strengthening of child protection capacities in the field. The Special Representative remains committed to advocating with donor countries to ensure that these action plans and reintegration programmes led by UNICEF receive the necessary attention in terms of long-term sustainable funding.

72. Regular coordination also takes place with the Special Representative of the Secretary-General on Violence against Children on issues of common concern, including the joint campaign for the universal ratification of the Optional Protocols to the Convention on the Rights of the Child.

73. The Office of the Special Representative has continued to work closely with the Special Representative of the Secretary-General for Sexual Violence in Conflict to advance preventive activities on sexual violence against children. This reporting period has seen increased collaboration at the technical level to ensure that the activities of the two offices complement each other. Members of staff of the Office of the Special Representative participated in a workshop organized by the Department of Peacekeeping Operations on this matter and engaged on an ongoing basis with the Office of the Special Representative for Sexual Violence in Conflict, the Department of Peacekeeping Operations and UNICEF for the preparation of guidance on sexual violence for field missions and partners. It has been agreed that the Special Representative for Sexual Violence in Conflict will take the lead on all matters related to sexual violence, including on obtaining commitments from parties to conflict where appropriate, and in close consultation with the Office of the Special Representative for Children and Armed Conflict for matters relating to children. In situations where there is no monitoring and reporting framework for the sexual violence in conflict agenda to take the lead, the Special Representative for Children and Armed Conflict will continue to advocate for the implementation of action plans on sexual violence against children.

VI. Recommendations for the way forward

74. **The Special Representative urges Member States, United Nations agencies, funds and programmes and NGOs to redouble efforts to implement the full range of protection and programmatic measures outlined in the recommendations of the 1996 Machel study and the 2007 10-year review of that study. In this regard, part two of the report of the Special Representative of 2007 (A/62/228), which included recommendations based on the findings of the 10-year review, is referenced.**

75. Cognizant of the primary responsibility of States in the protection of children, the Special Representative urges Member States to strengthen policies and practices that ensure prevention of violation and abuse and stands ready to facilitate the sharing of best practices between Member States in that regard.

76. The Special Representative reiterates her call for States to establish 18 years as the minimum age for voluntary recruitment into the armed forces when depositing their binding declaration (under article 3) upon ratification of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.

77. The Special Representative calls upon Member States to end impunity and to prosecute and punish those who commit grave violations against children during armed conflict. The international community should support Member States whenever appropriate by developing their capacity to deal with issues of justice during conflict situations.

78. Given the serious impact that military operations, particularly those involving aerial attacks, including by drone and helicopter, and night raids, have on children, the Special Representative welcomes efforts by multinational forces to adopt and implement tactical directives and standard operating procedures to minimize civilian casualties and destruction of civilian installations and urges all multinational forces and peacekeeping operations to ensure that appropriate policies and procedures be put in place, and the requisite training of military personnel conducted.

79. The Special Representative encourages Member States to apply juvenile justice standards and due process safeguards when bringing a child to trial and to avoid maintaining children in administrative or prolonged pretrial detention. Where possible, Member States should consider excluding children below 18 from criminal responsibility for crimes committed while associated with an armed force or an armed group, by virtue of their age, the chain of command and the forced nature of recruitment. Non-judicial, restorative accountability mechanisms that take the best interests of the child into consideration and promote their reintegration should be introduced.

80. Recognizing that sustainable, long-term social and economic reintegration is the cornerstone for the durable separation of children from parties to armed conflict, the Special Representative urges donors to provide sustained and long-term support to reintegration in line with the Paris Principles and Guidelines on Children associated with Armed Forces or Armed Groups, including in the areas of education, vocational training and income-generating activities, as appropriate, and to support the financial aspects of the implementation of actions plans to end the recruitment and use, killing and maiming of and sexual violence against children, as well as attacks on schools and hospitals.

81. The Special Representative encourages Member States to continue to support the mainstreaming of child protection in United Nations activities, both in field missions and at Headquarters, and to facilitate the timely deployment of child protection advisers in peacekeeping and peacebuilding, as appropriate, as well as the authorization of adequate resources for this purpose.

82. **Member States contributing uniformed personnel are encouraged to incorporate a child protection module into their national predeployment training for military, police and civilian personnel.**

83. **The Special Representative encourages all relevant United Nations agencies and programmes to strengthen their child protection capacity, including with dedicated capacity when appropriate, at global and field levels.**

Annex

Suggested standard operating procedures for the protection of children in the conduct of military operations

(a) Establish a joint military-civilian assessment of the security risk for populations, and especially children, prior to any military action;

(b) Refrain from engaging in combat and/or using heavy artillery in highly populated areas. In this context, the protection of schools and hospitals as "zones of peace" should be paramount;

(c) Refrain from occupying or using schools and health facilities, or their vicinity, for purposes that could turn them into military targets;

(d) Undertake systematic post-operation assessment of the impact on civilians including children;

(e) Implement an immediate and transparent framework of investigation into alleged crimes committed against children by elements of the armed forces in the conduct of military operations. Reports on the progress and results of these investigations should be made public and disciplinary measures, if appropriate, should be promptly taken against the perpetrators;

(f) Establish a framework to ensure reparations and/or compensation are provided to children and their families for violations committed in the context of military operations that led to the killing and/or maiming of children or acts of sexual violence against children;

(g) Develop procedures for the reception, treatment and rapid handover to United Nations child protection actors of children separated from armed groups in the course of military operations;

(h) Appoint a focal point on children and armed conflict within the armed forces in order to follow up on all steps mentioned above.